

(d) when a public company has entered into an agreement, and subsequently becomes amalgamated with another public company, the new company which arises out of the amalgamation;

(e) when the promoters of a public company have, before its incorporation, entered into an agreement, the company: provided that the company has ratified and adopted the agreement and the agreement is warranted by the terms of the incorporation.

#### Illustrations.

(a). A agrees to convey certain land to B by a particular day. A dies intestate before that day without having conveyed the land. B may compel A's heir or other representative in interest to perform the agreement specifically.

(b). A agrees to sell certain land to B for Rs. 5,000. A afterwards conveys the land for Rs. 6,000 to C, who has notice of the original agreement. B may enforce specific performance of the agreement as against C.

(c). A agrees to sell land to B for Rs. 5,000. B takes possession of the land. Afterwards A sells it to C for Rs. 6,000. C makes no enquiry of B relating to his interest in the land. B's possession is sufficient to affect C with notice of his interest, and he may enforce the agreement against C.

(d). A agrees in consideration of Rs. 1,000 to bequeath certain of his lands to B. Immediately after the agreement A dies intestate, and C takes out administration to his estate. B may enforce the agreement against C.

(e). A agrees to sell certain land to B. Before the completion of the agreement, A becomes a lunatic and C is appointed his committee. B may specifically enforce the agreement against C.

(f). A, the tenant for life of an estate, with remainder to B, in due exercise of a power conferred by the settlement under which he is tenant for life, agrees to sell the estate to C, who has notice of the settlement. Before the sale is completed, A dies. C may enforce specific performance of the agreement against B.

(g). A and B are joint tenants of land, his undivided moiety of which either may alien in his lifetime, but which, subject to that right, devolves on the survivor. A agrees to sell his moiety to C and dies. C may enforce specific performance of the agreement against B.

(h). *Against whom Agreements cannot be specifically enforced.*

27. Specific performance of an agreement cannot be enforced against a party thereto in any of the following cases:—

(a) if the consideration to be received by him is so grossly inadequate, with reference to the state of things existing at the date of the agreement, as to be either by itself or coupled with other circumstances evidence of fraud or of undue advantage taken by the plaintiff;

(b) if his assent was obtained by the misrepresentation (whether wilful or innocent), concealment, circumvention, or unfair practices, of any party to whom performance would become due under the contract, or by any promise of such party which has not been substantially fulfilled;

(c) if his assent was given under the influence of mistake of fact, misapprehension or surprise: Provided that, when the agreement provides for compensation in case of mistake, compensation may be made for a mistake within the scope of such provision, and the agreement may be specifically enforced in other respects if proper to be so enforced.

#### Illustrations.

(a). A, one of two executors, in the erroneous belief that he had the authority of his co-executor, enters into an agreement for the sale to B of his testator's property. B cannot insist on the sale being completed.

(b). A directs an auctioneer to sell certain land. A afterwards revokes the auctioneer's authority as to 20 bighás of this land, but the auctioneer inadvertently sells the whole to B, who has not notice of the revocation. B cannot enforce specific performance of the agreement.

(i). *The Effect of dismissing a Suit for Specific Performance.*

28. The dismissal of a suit for specific performance of an agreement shall bar the plaintiff's right to sue for the breach of such agreement.

### CHAPTER III.

#### OF THE RECTIFICATION OF INSTRUMENTS.

29. When through fraud or a mutual mistake of the parties, a contract or other instrument in writing does not truly express the intention of the parties, the Court, on finding it clearly proved—

(a) that there has been fraud or mistake in framing the instrument, and

(b) that the intention of the parties in executing the instrument was as alleged by the plaintiff,

may in its discretion rectify the instrument, so as to express that intention, so far as it can be done without prejudice to rights acquired by third persons, in good faith and for value.

#### Illustrations.

(a). A, intending to sell to B his house and one of three godowns adjacent to it, executes a conveyance prepared by B, in which, through B's fraud, all three godowns are included.

Of the two godowns which were fraudulently included, B gives one to C and lets the other to D for a rent, neither C nor D having any knowledge of the fraud.

The conveyance may, as against B and C, be rectified so as to exclude from it the godown given to C; but it cannot be rectified so as to affect D's lease.

(b). By a marriage-settlement, A, the father of B, the intended wife, covenanted with C, the intended husband, to pay to C, his executors, administrators and assigns, during A's life, an annuity of Rs. 5,000. C dies insolvent and the official assignee claims the annuity from A. The Court, on finding it clearly proved that the parties always intended that this annuity should be paid as a provision for B and her children, may rectify the settlement, and decree that the assignee has no right to any part of the annuity.

30. For the purpose of rectifying a contract in writing, it must be presumed that all the parties thereto intended to make an equitable and conscientious agreement.

31. In rectifying a written instrument, the Court may inquire what the instrument was intended to mean, and what were intended to be its legal consequences, and is not confined to the inquiry what the language of the instrument was intended to be.

32. A contract in writing may be first rectified and then, if the plaintiff has so prayed in his plaint and the Court thinks fit, specifically enforced.

#### Illustration.

A agrees in writing to pay his attorney, B, a fixed sum in lieu of costs.

The agreement contains mistakes as to the name and rights of the client, which, if construed strictly, would have excluded B from all rights under the agreement. B is entitled, if the Court thinks fit, to have it rectified, and to an order for payment of the sum, as if at the time of its execution it had expressed the intention of the parties.



## CHAPTER IV.

## OF THE RESCISSION OF CONTRACTS.

33. Any person interested in a contract in writing may sue to have it rescinded, and such rescission may be adjudged by the Court, in any of the following cases, namely:—

- (a) where the contract is voidable or terminable by the plaintiff;
- (b) where the contract is unlawful for causes not apparent on its face, and the defendant is more to blame than the plaintiff;
- (c) where a decree for specific performance of a contract of sale, or of a contract to take a lease, has been made, and the purchaser or lessee makes default in payment of the purchase-money or other sums which the Court has ordered him to pay.

EXPLANATION.—In the case mentioned in clause (c) of this section, when the purchaser or lessor is in possession of the subject-matter, the Court may also order him to pay to the vendor or lessor the rents and profits, if any, received by him, together with the costs occasioned by the non-completion of the purchase or lease.

*Illustration.*

To (b)—A, an attorney, induces B, his client, to transfer property to him for the purpose of defrauding B's creditors. Here the parties are not equally in fault, and B is entitled to have the instrument of transfer rescinded.

34. Rescission of a contract in writing cannot be adjudged for mere mistake, unless the party against whom it is adjudged can be restored to substantially the same position as if the contract had not been made.

35. A plaintiff instituting a suit for the specific performance of a contract in writing may pray in the alternative that, if the contract cannot be enforced, it may be rescinded and delivered up to be cancelled.

36. On adjudging the rescission of a contract, the Court may require the party to whom such relief is granted to make any compensation to the other which justice may require.

## CHAPTER V.

## OF THE CANCELLATION OF INSTRUMENTS.

37. Any person having reasonable apprehension that a written instrument, if left outstanding, may cause serious injury to a person against whom it is void or voidable, may sue to have it so adjudged, and the Court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

*Illustrations.*

(a). A, the owner of a ship, by fraudulently representing her to be seaworthy, induces B, an underwriter, to insure her. B may obtain the cancellation of the policy.

(b). A conveys land to B, who bequeaths it to C and dies. Thereupon, D gets possession of the land, and produces a forged instrument stating that the conveyance was made to B in trust for him. C may obtain the cancellation of the forged instrument.

(c). A, representing that the tenants on his land were all at will, sells it to B, and conveys it to him by an instrument dated the 1st January 1875. Soon after that day, A fraud-

ulently grants to C a lease of part of the lands, dated the 1st October 1874. B may obtain the cancellation of this lease.

(d). A agrees to sell and deliver a ship to B, to be paid for by B's acceptances of four bills of exchange, for sums amounting to Rs. 10,000, to be drawn by A on B. The bills are drawn and accepted, but the ship is not delivered according to the agreement. A sues B on one of the bills. B may obtain the cancellation of all the bills.

38. Where an instrument is evidence of different rights or different obligations, the Court may, in a proper case, cancel it in part and allow it to stand for the residue.

*Illustration.*

A draws a bill on B, who endorses it to C, by whom it appears to be endorsed to D, who endorses it to E. C's endorsement is forged. C is entitled to have such endorsement cancelled, leaving the bill to stand as regards A, B, D and E.

39. On adjudging the cancellation of an instrument, the Court may require the party to whom such relief is granted to make any compensation to the other which justice may require.

## CHAPTER VI.

## OF DECLARATORY DECREES.

40. Any person entitled to any legal character, or to any future right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief.

EXPLANATION.—A trustee of property is a person interested to deny a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee.

Provided that no Court shall make any such declaration in any of the following cases:—

- (a) where the right as to which the declaration is sought is contingent, or may never arise;
- (b) where the plaintiff is in possession of the right which he seeks to have declared;
- (c) where the right respecting which the declaration is sought could be enforced by ordinary suit.

EXPLANATION.—The presumptive right of a Hindú to property, if he survive the widow of a sonless Hindú, is not within clause (a) of the above proviso.

*Illustrations.*

(a). A bequeaths his property to B, C and D, "to be equally divided amongst all and each of them, if living at the time of my death, then amongst their surviving children." No such children are in existence. In a suit against A's executor, the Court may declare whether B, C and D took the property absolutely, or only for their lives, but it may not declare the interests of the children before their rights are vested.

(b). A covenants that if he should at any time be entitled to property exceeding one lakh of rupees, he will settle it upon certain trusts. Before any such property accrues, or any persons entitled under the trusts are ascertained, he institutes a suit to obtain a declaration that the covenant is void for uncertainty. The Court cannot make the declaration.

(c). The widow of a sonless Hindú alienates part of the property of which she is in possession as such. The person presumptively entitled to possess the property if he survive her, may, in a suit against the alienee, obtain a declaration that the alienation was made without legal necessity and was therefore void beyond the widow's life-time.

(d). A Hindú widow in possession of property adopts a son to her deceased husband. The person presumptively entitled to possession of the property on her death without a son may, in a suit against the adopted son, obtain a declaration that the adoption was invalid.

(e). A is in possession of certain property. B, alleging that he is the owner of the property, requires A to deliver it to him. This alone is not enough to entitle A to a declaration of his right to hold the property.

(f). A bequeaths property to B for his life, with remainder to B's wife and her children, if any, by B, but if B die without any wife or children, to C. B has a putative wife, D, and children, but C denies that B and D were ever lawfully married. D and her children may, in B's life-time, institute a suit against C and obtain therein a declaration that they are truly the wife and children of B.

41. A declaration made under this chapter is binding only on the parties to the suit, persons claiming through them respectively, and, where any of the parties are trustees, on the persons for whom, if in existence, such parties would be trustees.

#### Illustration.

A, a Hindú, in a suit to which B, his alleged wife, and her mother are defendants, seeks a declaration that his marriage was duly solemnized and an order for the restitution of his conjugal rights. The Court makes the declaration and order. C, claiming that B is his wife, then sues A for the recovery of B. The declaration made in the former suit is not binding upon C.

### CHAPTER VII.

#### OF THE ENFORCEMENT OF PUBLIC DUTIES.

42. Any of the High Courts of Judicature at Fort William, Madras and Bombay may, on application, make an order requiring any specific act to be done by any person holding a public office of a permanent nature, or by any corporation or inferior Court of Judicature: provided—

(a) that such act is clearly incumbent on such person or Court in his or its public character, or on such corporation in its corporate character;

(b) that, in the opinion of the High Court, such act is consonant to right and justice;

(c) that the applicant has no other specific and adequate legal remedy; and

(d) that the remedy given by the order applied for will be complete.

Nothing in this section shall be deemed to authorize any High Court—

(e) to make any order binding on the Secretary of State for India in Council, on the Governor General in Council, on the Governor of Madras in Council, on the Governor of Bombay in Council, or on the Lieutenant-Governor of Bengal; or

(f) to make any order on any other servant of the Crown, as such, merely to enforce the satisfaction of a claim upon the Crown.

43. Every application under section forty-two must be founded on an affidavit of the party injured, stating his right in the matter in question, his demand of justice and the denial thereof; and the High Court may, in its discretion, either make the order applied

for absolute in the first instance, or refuse it and grant a rule to show cause why the order applied for should not be made.

If, in the latter case, the party complained of shows no sufficient cause, the High Court may first make an order in the alternative, either to do the act required, or to signify some reason to the contrary and make an answer thereto by such day as the High Court fixes in this behalf.

44. If the person to whom such order is directed makes no answer, or makes an insufficient or a false answer, the High Court may then issue a peremptory order to do the act absolutely.

45. Every order under this chapter shall be executed, and may be appealed from, as if it were a decree made in the exercise of the ordinary original civil jurisdiction of the High Court.

46. The costs of all applications and orders under this chapter shall be in the discretion of the High Court.

47. Neither the High Court nor any Judge thereof shall hereafter issue any writ of *mandamus*.

48. Each of the said High Courts shall, as soon as conveniently may be, frame rules to regulate the procedure under this chapter; and until such rules are framed, the practice of such Court as to applications for and grants of writs of *mandamus* shall apply, so far as may be practicable, to applications and orders under this chapter.

### PART III.

#### OF PREVENTIVE RELIEF.

### CHAPTER VIII.

#### OF INJUNCTIONS GENERALLY.

49. Preventive relief is granted at the discretion of the Court by injunction, temporary or perpetual.

50. Temporary injunctions are such as are to continue until a specified time. They may be granted at any period of a suit, and are regulated by the Code of Civil Procedure.

A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit: the defendant is thereby perpetually enjoined from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff.

### CHAPTER IX.

#### OF PERPETUAL INJUNCTIONS.

51. Subject to the other provisions contained in, or referred to by, this chapter, a perpetual injunction may be granted to prevent the breach of an obligation existing in favour of the applicant, whether express or implied.



When such obligation arises from contract, the Court shall be guided by the rules and provisions contained in chapter II of this Act.

When such obligation arises from an actual or threatened invasion by the defendant of the plaintiff's right to, or enjoyment of, property, the Court may grant a perpetual injunction in the following cases (namely)—

- (a) where the parties have expressly agreed in writing that, in case of such invasion, a perpetual injunction may be granted :
- (b) where there exists no standard for ascertaining the actual damage caused by the invasion :
- (c) where the invasion is such that pecuniary compensation would not afford adequate relief :
- (d) where it is probable that pecuniary compensation cannot be got for the invasion :
- (e) where the injunction is necessary to prevent a multiplicity of judicial proceedings :
- (f) where the obligation arises from a trust.

#### Illustrations.

(a). A lets certain land to B, and B agrees not to dig sand or gravel thereout. A may obtain an injunction to restrain B from digging in violation of his agreement.

(b). A, the owner of two adjoining houses, lets one to B and afterwards lets the other to C. A and C begin to make such alterations in the house let to C as will prevent the comfortable enjoyment of the house let to B. B may obtain an injunction to restrain them from doing so.

(c). A lets certain arable lands to B for purposes of husbandry, but without any express agreement as to the mode of cultivation. Contrary to the mode of cultivation customary in the district, B threatens to sow the lands with seed injurious thereto and requiring many years to eradicate. A may obtain an injunction to restrain B from sowing the lands in contravention of his implied agreement to use them in a husbandlike manner.

(d). A, B and C are partners, the partnership being determinable at will. A threatens to do an act tending to the destruction of the partnership-property. B and C may, without seeking a dissolution of the partnership, obtain an injunction to restrain A from doing the act.

(e). A, a Hindú widow in possession of her deceased husband's property, commits destruction of the property without any cause sufficient to justify her in so doing. The heir expectant may obtain an injunction to restrain her.

(f). A, B and C are members of an undivided Hindú family. A cuts timber growing on the family-property, and threatens to destroy part of the family-house and to sell some of the family-utensils. B and C may obtain an injunction to restrain him.

(g). A, the owner of certain houses in Calcutta, becomes insolvent. B buys them from the official assignee and enters into possession. A persists in trespassing on and damaging the houses, and B is thereby compelled, at considerable expense, to employ men to protect the possession. B may obtain an injunction to restrain further acts of trespass.

(h). The inhabitants of a village claim a right of way over A's land. In a suit against several of them, A obtains a declaratory decree that his land is subject to no such right. Afterwards each of the other villagers sues A for obstructing his alleged right of way over the land. A may obtain an injunction to restrain them.

(i). A, in an administration-suit to which a creditor, B, is not a party, obtains a decree for the administration of C's assets. B proceeds against C's estate for his debt. A may obtain an injunction to restrain B.

(j). A and B are in possession of contiguous lands and of the mines underneath them. A works his mine so as to extend under B's mine, and threatens to remove certain pillars which help to support B's mine. B may obtain an injunction to restrain him from so doing.

(k). A rings bells or makes some other unnecessary noise so near a house as to interfere materially and unreasonably with the physical comfort of the occupier, B. B may obtain an injunction restraining A from making the noise.

(l). A pollutes the air with smoke so as to interfere materially with the physical comfort of B and C, who carry on business in a neighbouring house. B and C may obtain an injunction to restrain the pollution.

(m). A builds a house with eaves projecting over B's land. B may obtain an injunction to prevent A from so doing.

(n). A infringes B's patent. If the Court is satisfied that the patent is valid and has been infringed, B may obtain an injunction to restrain the infringement.

(o). A pirates B's copyright. B may obtain an injunction to restrain the piracy, unless the work of which copyright is claimed is libellous or obscene.

(p). A improperly uses the trademark of B. B may obtain an injunction to restrain the user, provided that B's use of the trademark is honest.

(q). In order to sell his goods, A uses marks, labels or descriptions so closely resembling those used by B as to be likely to deceive buyers into thinking that they are actually buying B's goods. B may obtain an injunction to restrain the user, provided his own use of the marks, labels or descriptions be an honest one.

(r). A sells an article called "Mexican Balm", stating that it is compounded of divers rare essences, and has sovereign medicinal qualities. B commences to sell a similar article to which he gives a name and description such as to lead people into the belief that they are buying A's Mexican Balm. A sues B for an injunction to restrain the sale. B shows that A's Mexican Balm consists of nothing but scented hog's lard. A's use of his description is not an honest one and he cannot obtain an injunction.

(s). A trustee threatens a breach of trust. His co-trustees, if any, should and the beneficial owners may, obtain an injunction to prevent the breach.

(t). The directors of a public company are about to pay a dividend out of capital or borrowed money. Any of the shareholders may obtain an injunction to restrain them.

(u). The directors of a fire and life-insurance company are about to engage in marine insurances. Any of the shareholders may obtain an injunction to restrain them.

(v). A, an executor, through misconduct or insolvency, is bringing the property of the deceased into danger. The Court may grant an injunction to restrain him from getting in the assets.

(w). A, a tradesman, holds out B as his partner against the wish and without the authority of B. B may obtain an injunction to restrain A from so doing.

(x). A, a trustee for B, is about to make an imprudent sale of a small part of the trust-property. B may obtain an injunction to restrain the sale, even though compensation in money would have afforded him adequate relief.

(y). A makes a voluntary settlement of an estate on B and his children. A then contracts to sell the estate to C. B or any of his children may obtain an injunction to restrain the sale.

(z). In the course of A's employment as a vakil, certain papers belonging to his client, B, come into his possession. A threatens to make these papers public, or to communicate their contents to a stranger. B may obtain an injunction to restrain A from so doing.

(aa). A mortgages lands to B with the usual power of sale. C and D then recover judgments against A. B exercises the power and threatens to part with the surplus-moneys. As regards these, he is a trustee for A and those claiming under A. C and D may therefore obtain an injunction to restrain B from parting with the surplus.

(bb). A is B's medical adviser. He demands money of B which B declines to pay. A then threatens to make known the effect of B's communications to him as a patient. This is contrary to A's duty, and B may obtain an injunction to restrain him from so doing.

(cc). A, a very eminent man, writes letters on family-topics to B. After the death of A and B, C, who is B's residuary legatee, proposes to make money by publishing A's letters. D, who is A's executor, has a property in the letters, and can obtain an injunction to restrain C from publishing them.

(dd). A carries on a manufactory and B is his assistant. In the course of his business, A imparts to B a secret process of value. B afterwards demands money of A, threatening, in case of refusal, to disclose the process to C, a rival-manufacturer. A can obtain an injunction to restrain B from disclosing the process as being a thing contrary to his duty.

52. When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the Court is capable of enforcing, the Court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts.

*Illustrations.*

(a). A, by new buildings, obstructs lights to the access and use of which B has acquired a right under the Indian Limitation Act, Part IV. B may obtain an injunction not only to restrain A from going on with the buildings, but also to pull down so much of them as obstructs B's lights.

(b). In the case put as illustration (bb) to section 51, the Court may also order all written communications made by B, as patient, to A, as physician, to be destroyed.

(c). In the case put as illustration (cc) to section 51, the Court may also order A's letters to be destroyed.

(d). In the cases put as illustrations (p), (q) and (r) to section 51, the Court may also order the copies produced by piracy, and the trademarks, labels and descriptions improperly used, by A to be destroyed.

Injunction when refused. 53. An injunction cannot be granted.—

(a) to stay a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings:

(b) to stay proceedings in a Court superior to that from which the injunction is sought:

(c) to restrain persons from applying to any legislative body:

(d) to interfere with the public duties of any department of the Government of India or the Local Government, or with the sovereign acts of a foreign Government:

(e) to stay proceedings in any criminal matter:

(f) to prevent the breach of an agreement the performance of which would not be specifically enforced:

(g) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance:

(h) to prevent a libel or other act, whether punishable by criminal law or not, which is not an invasion of the plaintiff's right to, or his enjoyment of, property, and is not inconsistent with any contract made by the defendant with the plaintiff, or with any special duty which the defendant owes to the plaintiff:

(i) to prevent a continuing breach in which the applicant has acquiesced:

(j) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding, except in case of breach of trust:

(k) when the conduct of the applicant or his agents has been such as to disentitle him to the assistance of the Court:

(l) where the applicant has no personal interest in the matter.

*Illustrations.*

(a). A being B's neighbour, and having no other relations with him, threatens to publish a statement concerning B which would be punishable under chapter XXI of the

Indian Penal Code. The Court cannot grant an injunction to restrain the publication, even though it may be injurious to B's property.

(b). A, being B's medical adviser, threatens to publish B's communications with him, showing that B has led an immoral life: B may obtain an injunction to restrain the publication.

(c). A applies for an injunction to restrain B from working mines under A's land. It appears that B has been working them with A's permission for eight years. The injunction should be refused.

(d). A seeks an injunction to restrain his partner, B, from receiving the partnership-debts and effects. It appears that A had improperly possessed himself of the books of the firm and refused B access to them. The Court will refuse the injunction.

(e). A manufactures and sells crucibles, designating them as "patent plumbago crucibles", though, in fact, they have never been patented. B pirates the designation. A cannot obtain an injunction to restrain the piracy.

54. Notwithstanding section fifty-three, clause (f), where a contract comprises an affirmative agreement to do a certain act,

coupled with a negative agreement express or implied not to do a certain act, the circumstance that the Court is unable to compel specific performance of the affirmative agreement, shall not preclude it from granting an injunction to perform the negative agreement; provided that the applicant has not failed to perform the contract so far as it is binding on him.

*Illustrations.*

(a). A agrees to sell to B for rupees 1,000 the good-will of a certain business unconnected with business-premises, and further agrees not to carry on that business in Calcutta. B pays A the rupees 1,000, but A carries on the business in Calcutta. The Court cannot compel A to send his customers to B, but B may obtain an injunction restraining A from carrying on the business in Calcutta.

(b). A agrees to sell to B the good-will of a business. A then sets up a similar business close by B's shop, and solicits his old customers to deal with him. This is contrary to his implied agreement, and B may obtain an injunction to restrain A from soliciting the customers, and from doing any act whereby their good-will may be withdrawn from B.

(c). A agrees with B to sing for twelve months at B's theatre and not to sing in public elsewhere. B cannot obtain specific performance of the agreement to sing, but he is entitled to an injunction restraining A from singing at any other place of entertainment.

(d). B agrees with A that he will serve him faithfully for twelve months as a clerk. A is not entitled to a decree for specific performance of this agreement. But he is entitled to an injunction restraining B from serving a rival-house as clerk.

(e). A agrees with B that, in consideration of rupees 1,000 to be paid to him by B on a day fixed, he will not set up a certain business within a specified distance. B fails to pay the money. A cannot be restrained from carrying on the business within the specified distance.

SCHEDULE.

(See section 2.)

Number and year.	Subject.	Extent of repeal.
VIII of 1859	Code of Civil Procedure ...	Secs. 15 and 192.
XIV of 1859	Limitation Act ...	Sec. 15.



## STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill, which is intended as a supplement to the Code of Civil Procedure, as revised and published in March 1875, is to define and amend the law relating to specific and preventive relief.

2. Under the head of specific relief, it deals with suits for—

- (a) the possession of specific property, moveable or immoveable,
- (b) the specific performance of agreements,
- (c) the rectification of instruments,
- (d) the rescission of contracts,
- (e) the cancellation of instruments,
- (f) declaratory decrees, and
- (g) the enforcement of public duties.

3. Under the head of preventive relief, it treats of perpetual injunctions.

4. The chapter relating to the recovery of possession of specific property embodies the English rules as to detinue, and the useful provision of the Indian Act, XIV of 1859, section 15, as to the right of persons informally dispossessed of land to recover possession by a summary suit. Words have been introduced to show expressly that this provision does not apply to lands claimed to belong to Government. This exemption in effect resulted from section 17 of Act XIV of 1859.

5. The matter of the chapter relating to specific performance is distributed under the following heads:—

- (a) Agreements which may be specifically enforced:
- (b) Agreements which cannot be specifically enforced:
- (c) For whom agreements may be specifically enforced:
- (d) Of the discretion of the Court:
- (e) For whom agreements may not be specifically enforced:
- (f) For whom agreements may not be specifically enforced, except with a variation:
- (g) Against whom agreements may be specifically enforced:
- (h) Against whom agreements may not be specifically enforced:
- (i) The effect of dismissing a suit for specific performance.

It attempts to codify the English law on this subject with the following modifications:—

6. Subject to the negative rules afterwards set forth in this chapter, the Bill empowers the Courts to decree specific performance of any agreement when the parties have expressly agreed in writing that specific performance thereof may be required by either of them, or that damages shall not be considered adequate relief. This novel provision, taken from the New York Civil Code, is one of the means by which the Bill proposes to extend a useful jurisdiction, one, it may be remarked, peculiarly adapted to India, where the alternative remedy for a breach of contract, that, namely, of damages, is, owing to the poverty of the bulk of the population and the difficulty of executing money-decrees, often so utterly nugatory.

7. In England it has more than once been ruled that the Court of Chancery will not compel the performance of a continuous duty extending over many years. The Bill renders this doctrine more precise by declaring that an agreement, the performance of which necessarily involves the performance of continuous duties over a longer period than five years from its date, shall not be specifically enforced. Whether this is the best limit of time, will be a point for consideration before the Bill is passed.

8. With regard to specific performance of contracts to execute buildings or to cultivate lands, the Bill is intended to express the present law.

9. The rules as to when a contract for the sale of a married woman's estate will be specifically enforced are in England excessively complicated. The Bill makes no distinction in her case, and thus recognizes the principle embodied in the Indian Succession Act, section 4, and Act III of 1874.

10. In England a voluntary settlement of personal chattels is binding on the settlor and cannot be defeated by a subsequent sale. But it is otherwise in the case of freeholds, copyholds and leaseholds, and specific performance of a subsequent agreement to sell land may be enforced against the voluntary settlor and the parties claiming under the settlement, though not by the settlor. The Bill does not recognize this distinction (which is due to an artificial construction of 27 Eliz., c. 4), and treats land, in this respect, as if it were moveable property.

11. The absence in India of any enactments resembling the Statute of Frauds, sections 1, 3, 4 and 17, renders it unnecessary to embody in the Bill the intricate rules of the Court of Chancery as to when a parol agreement relating to land will, and when it will not, be specifically enforced.

12. It seems impossible to elicit a consistent doctrine from the English decisions as to the rights of a purchaser or lessee to specific performance with abatement or compensation when the title of the person agreeing to sell or lease is defective. The Bill lays down that only in *one* case can such relief be granted, namely, where the part of the agreement which must be left unperformed bears only a small proportion to the whole in value and admits of compensation in money. This will relieve the Courts from the exercise of a duty which, in many cases, must be more a matter of guesswork than of judicial discretion.

13. The right to enforce a contract specifically may, in England, be lost by delay in resorting to the Court, and a large mass of cases exists relating to this doctrine. The Bill contains no rules on the subject, for in India the provision of the Limitation Act (IX of 1871), schedule II, No. 113, that suits for specific performance must be brought within three years from the day on which the plaintiff has notice that performance is refused, renders the doctrine of laches inapplicable to this kind of litigation. See 2 Mad. High Court Rep. 114, 270.

14. It seems to be erroneously supposed by some of the Mofussil Judges that, when a contract is proved, the grant of a decree for its specific performance is a matter of course. Care has been taken in this chapter to show distinctly that the grant of such decrees is purely within the sound discretion of the Court.

15. As in this country all remedies on an agreement can be granted by one and the same Court, it is conceived that only one suit should lie on account of its non-performance. It has on this account been provided in section 28 that if a suit for specific performance is dismissed, no other suit shall be brought on the same agreement.

16. Chapter III, as to the rectification of instruments, chapter IV, as to the rescission of contracts and chapter V, as to the cancellation of instruments, require no special notice. They are taken, with a few verbal changes, from the New York Civil Code, and represent substantially the law on these subjects administered by English Courts of Equity.

17. Chapter VI, as to declaratory decrees, is intended to take the place of Act VIII of 1859, section 15, and differs from the English law on the subject principally in authorising the Court to make declarations of future rights, provided only that such rights are vested. In the absence of such a jurisdiction, it would seem to be necessary to authorise suits to perpetuate testimony, and there are obvious reasons why such suits should not be allowed in India.

18. Chapter VII deals with the subject of *mandamus*, and applies only to the Presidency High Courts. Care has been taken to exempt from orders under this chapter the Secretary of State in Council, the Government of India, and the Local Governments.

19. In Part III are contained some general rules as to when perpetual injunctions will, and when they will not, be granted. The chief modifications of the present law which the Bill proposes to make are as follows:—

20. By the Bill, the Courts are expressly given power to grant injunctions to do substantive acts, when such injunctions are necessary to prevent the breach of an obligation. In England, the same thing is partially effected by the indirect method of making orders, called mandatory injunctions, to refrain from leaving a thing undone.

21. Under the Bill, an injunction to restrain a partner may be obtained without seeking a dissolution of the partnership, even when the partnership is determinable at will. In England the rule on this subject is still unsettled.

22. In England a married executrix will, as a rule, be restrained from getting in the assets if her husband be out of the jurisdiction, or a lunatic. The reason is that the husband, and he alone, is liable for a devastavit committed by his wife. The Indian Succession Act, sections 4 and 275, appears to relieve husbands of this liability, and the Bill accordingly contains no provision on the subject.

23. It is hardly necessary to observe that, in a country where law and equity are administered by the same Courts, the subject of staying legal proceedings need not be dealt with at much length. The provisions of the Bill relating to this matter are contained in section 56, clause (c), illustration (m), and in section 57, clauses (a) and (b), which relate to injunctions necessary to prevent a multiplicity of suits.

24. It may, in conclusion, be remarked that most of the many illustrations contained in the Bill are taken from the English Equity Reports.

SIMLA,  
The 25th October 1875. }

A. HOBHOUSE.

WHITLEY STOKES,  
Secy. to the Govt. of India.



[First Publication.]

The following Bill was introduced into the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 14th December 1875, and was referred to a Select Committee with instructions to make their report thereon in two months:—

No. 14 of 1875.

## THE PRESIDENCY BANKS BILL, 1876.

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## SCHEDULE.

*A Bill for constituting and regulating the Banks of Bengal, Madras and Bombay.*

WHEREAS the Bank of Bengal is now constituted and regulated by Act No. IV of 1862, as amended by Acts No. VI of 1862 and No. XIX of 1870, and its capital consists of twenty-two millions of rupees, in shares of one thousand rupees each;

And whereas the Bank of Madras is now constituted and regulated by Madras Act No. VI of 1866, as amended by Madras Act No. I of 1871, and its capital consists of five millions six hundred and twenty five thousand rupees, in shares of one thousand rupees each;

And whereas a Bank named the Bank of Bombay was constituted and regulated by Bombay Act No. X of 1863, as amended by Bombay Acts No. XV of 1866 and No. I of 1867; but such Bank has been wound up and the said Bombay Acts are now obsolete and should be expressly repealed;

And whereas on the tenth day of December 1867, a joint-stock Banking Company was registered and incorporated at Bombay, by virtue of the Indian Companies' Act, 1866, under the name of "The New Bank of Bombay, Limited," with a Memorandum of Association and Articles of Association then also registered, and prescribing the constitution and regulations for the management of such Bank;

And whereas the Government of India now holds two thousand two hundred shares in the said Bank of Bengal, and five hundred and sixty-two and a half shares in the said Bank of Madras; and, under the provisions of the said Acts, No. IV of 1862 and Madras Act No. VI of 1866, is bound to appoint, and has power to remove, certain of the directors of the said Banks of Bengal and Madras respectively, and has also power to give a proxy to any person whom the Governor General in Council may appoint, to attend and vote at any meeting of the proprietors of each of the same Banks;

And whereas the Government of India has determined to sell its said shares and to surrender its said powers; and it is expedient to relieve the said Government from the said duty of appointing directors, and to repeal the said enactments and to consolidate such of them as relate to the said Banks of Bengal and Madras respectively with the changes rendered necessary or desirable by such sale, surrender and relief;

And whereas it is expedient to reduce the said capital of the Bank of Bengal by two millions of rupees (being the nominal value of two thousand of the two thousand two hundred shares in the same Bank so held by the Government of India) and to reduce the said capital of the Bank of Madras by five hundred and sixty-two thousand five hundred rupees (being the nominal value of the shares in the same Bank so held by the Government of India), and to divide the capital so reduced of each of the said Banks into shares of five hundred rupees each;

And whereas it is expedient that the said New Bank of Bombay, Limited, should be reconstituted and regulated, in manner in this Act provided, under the name of the Bank of Bombay;

It is hereby enacted as follows:—

## CHAPTER I.

## PRELIMINARY.

1. This Act may be called "The Presidency Banks Act, 1876;"  
Short title.  
And it shall come into force on the first day of March 1876.  
Commencement.



2. On and from that day the enactments specified in the schedule hereto annexed shall be repealed to the extent mentioned in the third column of such schedule. But all bye-laws and regulations made under any such enactment, and then in force, shall, so far as they are consistent with this Act, be deemed to have been made hereunder.

The references made in the Indian Companies' Act, 1866, to the Bank of Bengal, the Bank of Madras and the Bank of Bombay, shall be deemed to be made respectively to the Bank of Bengal, the Bank of Madras and the Bank of Bombay as constituted by this Act.

3. In this Act, unless there be something repugnant in the subject or context—

"The Bank" means the Bank of Bengal, the Bank of Madras, or the Bank of Bombay (as the case may be), as constituted and regulated by this Act:

"Capital" means the capital from time to time of the Bank:

"Shares" means the shares from time to time of the capital, and includes also half shares:

"Capital Stock" means that part of the capital into which wholly paid-up shares have been converted or consolidated, and in the case of the Bank of Bengal and the Bank of Madras includes the present consolidated stock of such Banks respectively:

"Registered" means registered in the books of the Bank:

"Shareholders" means the duly registered holders from time to time of the shares of the Bank:

"Proprietors" means the duly registered holders from time to time of the capital stock of the Bank:

"Directors" means the Directors from time to time of the Bank, or, as the case may be, the Directors assembled at a Board:

"Board" means a meeting of the Directors duly called and constituted, or, as the case may be, the Directors assembled at a Board:

"Auditors" and "Secretary and Treasurer" mean those respective officers from time to time of the Bank, and "Secretary and Treasurer" includes a Deputy Secretary:

"General Meeting" means the meeting of proprietors or shareholders or both, held annually under section forty-nine; it includes any adjourned holding thereof:

"Special Meeting" means a meeting of proprietors or shareholders or both, held for the transaction of some particular business specified in the notice convening the meeting; it includes any adjourned holding thereof:

"Special Resolution" means a resolution passed at a special meeting:

"Office" means the office or principal office for the time being of the Bank:

"Goods" includes also bullion, wares and merchandise:

"Presidency of Fort St. George" means the territories now under the government of the Governor of Fort St. George in Council:

"Presidency of Bombay" means the territories now under the government of the Governor of Bombay in Council; and

"Presidency of Fort William" means all the territories in British India other than the Presidency of Fort St. George and the Presidency of Bombay.

## CHAPTER II.

### CONSTITUTION.

4. The several persons who, when this Act comes into force, are respectively the proprietors and shareholders of the said Bank of Bengal, Bank of Madras and New Bank of Bombay, Limited (hereinafter called the present Banks), or who shall, at any time thereafter, by virtue of this or any other Act regulating the Bank, become proprietors or shareholders, shall continue and constitute and be bodies corporate with perpetual succession, under the name.

in the case of the proprietors and shareholders of the said Bank of Bengal—of "The Bank of Bengal,"

in the case of the proprietors and shareholders of the said Bank of Madras—of "The Bank of Madras,"

and in the case of the shareholders and proprietors of the said New Bank of Bombay, Limited—of "The Bank of Bombay,"

and shall respectively possess and enjoy all the rights, powers and immunities incident by law to a corporation aggregate; subject, nevertheless, to the provisions of this or any other Act for the time being in force regulating the Bank.

The several persons who are then proprietors and shareholders of each of the present Banks of Bengal and Madras, or the executors or administrators of such proprietors and shareholders respectively, shall be entitled to be registered as proprietors and holders of a like quantity of stock and a proportionate number of shares, as is or are then registered in their names respectively, or in the names of the persons whom they represent respectively in the books of each of the said present Banks of Bengal and Madras, two shares in the Bank of Bengal as constituted by this Act being deemed equivalent to one share in the present Bank of Bengal, and two shares in the Bank of Madras as constituted by this Act being deemed equivalent to one share in the present Bank of Madras,

and the several persons who are then shareholders of the said New Bank of Bombay, Limited, or the executors or administrators of such shareholders respectively, shall be registered as holders of a like number of shares of the Bank of Bombay as constituted by this Act as are then registered in their names respectively, or in the names of the persons whom they represent respectively, in the books of the said New Bank of Bombay, Limited; and all such shares upon which the sum of five hundred rupees has then been paid, shall be deemed to have been fully paid up.

5. All the property, moveable and immovable, and all the securities, claims and demands, and the benefits of all agreements, of or to which the present Banks are or shall be respectively possessed or entitled, or which shall, or but

Proprietors and shareholders of present Banks to form bodies corporate.

Proprietors and shareholders of present Banks to be proprietors and shareholders of new Banks.

Property of present Banks to vest respectively in new Banks.

for this Act might be, on the said first day of *March* 1876, or might at any time thereafter have been, due to, or claimed or asserted by, the said Banks respectively shall, by virtue of this Act, become vested in and devolve upon, and may be claimed, made and recovered by,

in the case of the said Bank of Bengal,—the Bank of Bengal as constituted by this Act,  
in the case of the said Bank of Madras,—the Bank of Madras as constituted by this Act,  
and in the case of the said New Bank of Bombay, Limited,—the Bank of Bombay as constituted by this Act;

and the Bank shall, from and after the said first day of *March* 1876, be liable and subject to all debts, demands, claims and

liabilities which shall then be claimable from, or which, but for this Act, might be then, or might at any time thereafter, have been due or claimable from, or made, claimed, or asserted against, the said Bank of Bengal, Bank of Madras or New Bank of Bombay, Limited, as the case may be,

and no suit or legal proceeding then pending by or against the said Bank of Bengal, Bank of Madras or New Bank of Bombay, Limited, shall cease, or abate, or become defective, in consequence of this Act, but may be continued and prosecuted by or against the Bank.

6. The transfer of the assets and liabilities of the said New Bank of Bombay, Limited, to the Bank of Bombay by virtue of this Act, shall operate as a winding up and liquidation of the said New Bank of Bombay, Limited.

No shareholder or creditor of the said New Bank of Bombay, Limited, shall take any proceedings for winding-up the same under the Indian Companies' Act, 1866, or any Act for the time being in force relating to the winding-up of Companies;

and no person shall make, assert or take any claims, demands or proceedings against the same Bank, or the directors or officers thereof, except so far as may be necessary for enforcing the provisions of this or any other Act for the time being in force regulating the Bank of Bombay.

7. The Bank shall sue and be sued by its said corporate name;

and shall use such corporate seal as the directors from time to time appoint;

and may as such body corporate acquire and hold, either absolutely or conditionally, for a term or in perpetuity, any property whatsoever, moveable or immovable, and transfer, assign and convey the same.

8. The seal of the Bank shall not be affixed to any instrument except in the presence of at least two directors and of the Secretary and Treasurer, who shall sign their names to the instrument in token of their presence, and such signing shall be independent of the signing of any person who may sign the instrument as a witness.

Unless so signed as aforesaid, such instrument shall be of no validity.

## CHAPTER III.

## BUSINESS.

9. The Bank is authorized to carry on and transact the several kinds of business hereinafter specified (that is to say):

(a) the advancing and lending money, and opening cash-credits, upon the security of—

(1) promissory notes, debentures, stock and other securities of the Government of India;

(2) bonds, debentures and annuities charged by the Imperial Parliament on the revenues of India;

(3) stock or debentures of, or shares in, Railway or other Companies, the interest whereon shall have been guaranteed by the Government of India;

(4) debentures or other securities for money issued by, or on behalf of, any municipal body under the authority of any Act of an Indian legislature;

(5) goods which, or the documents of title to which, are deposited with, or assigned to, the Bank as security for such advances, loans or credits; and

(6) bills of exchange and other negotiable securities, which may be discounted in accordance with the provisions of section ten, paragraph (e).

Provided that such advances and loans may be made, if the directors think fit, to the Governor General in Council, without any specific security;

(b) the selling and realization of the proceeds of sale of any such promissory notes, debentures, stock receipts, bonds, annuities, stock, shares, securities, or goods which, or the documents of title to which, have been deposited with, or assigned to, the Bank as security for such advances, loans or credits, or which are held by the Bank, or over which the Bank is entitled to any lien or charge in respect of any such loan or advance or credit or any debt or claim of the Bank, and which have not been redeemed in due time in accordance with the terms and conditions (if any) of such deposit or assignment;

(c) the drawing, discounting, buying and selling of bills of exchange and other negotiable securities payable in India, or (in the case of the Bank of Madras) in Ceylon;

(d) the investing of the funds of the Bank upon any of the securities specified in paragraph (a) of this section, clauses (1), (2), (3) and (4),

and from time to time altering, converting and transposing such investments for or into others of the investments above specified;

(e) the making, issuing and circulating of bank-post-bills and letters of credit made payable in India, or (in the case of the Bank of Madras) in Ceylon, to order, or otherwise than to the bearer on demand;

(f) the buying and selling of bullion;

(g) the receiving of deposits and keeping cash-accounts on such terms as may be agreed on;

(h) the selling of all property, whether moveable or immovable, which may in any way come



into the possession of the Bank in satisfaction or part satisfaction of debts and claims or otherwise ;

(i) the transacting of pecuniary agency business on commission ;

(j) the acting as agent on commission in the transaction of the following kinds of business (namely) :—

(1) the buying and the taking charge of any Government or other securities, or shares in any Railway, Bank, Joint Stock, or other public Company ;

(2) the receiving of the interest or dividends on any securities or shares ;

(3) the purchase of any securities or shares ;

(4) the sale or transfer of any securities or shares, or the receipt of any principal money that may be payable thereon ;

(5) the investment of the principal and interest and dividends so received, or the proceeds of such sale as last aforesaid, upon any securities or shares, or, according to the instructions of its constituents, the holding or paying such principal, interest, dividends or proceeds, or, at the risk of such constituents, to remit the same by public or private bills of exchange, either payable in India or in Great Britain or Ireland, or elsewhere, and the doing of all acts necessary or proper for the purpose of effecting such remittances ;

(k) the drawing of bills of exchange, and the granting of letters of credit, payable out of India, for the use of its constituents for the purpose of the remittances mentioned in the last preceding clause of this section ;

(l) the buying, for the purpose of meeting such bills or letters of credit, of bills of exchange payable out of India, at any usance not exceeding six months.

(m) It shall also be lawful for the Bank under any arrangement or agreement with the Governor General in Council on behalf of the Secretary of State in Council

(1) to act as banker for, and to pay, receive, collect and remit money, bullion and securities on behalf of, the Government ;

(2) to undertake and transact any other business which the Government may from time to time entrust to the Bank ;

And the directors shall have power from time to time to arrange and settle with the Governor General in Council the terms of remuneration on which such business shall be undertaken by the Bank, and also as to the examination and audit from time to time of the accounts and affairs of the Bank by or on behalf of the Governor General in Council.

10. The directors shall not transact any kind of banking business other than those above specified, and in particular they shall not make any loan or advance—

Business which Banks may not transact,

(a) for a longer period than three months ; or

(b) upon the security of stock or shares of the Bank of which they are directors ; or

(c) upon mortgage, or in any other manner upon the security, of any immoveable property, or the documents of title relating thereto.

(d) Nor shall they lend or advance, by discount of bills or otherwise, to any individual or partnership firm, (except upon the security mentioned in section nine, paragraph (a), numbers (1) to (5) inclusive), any sums of money exceeding at any one time six hundred thousand rupees in the whole.

(e) Nor shall they discount any negotiable security of any individual or partnership firm, payable in the town or at the place where it is presented for discount, which does not carry on it the several responsibilities of at least two persons or firms unconnected with each other in general partnership.

(f) Nor shall they discount any negotiable security having a longer period to run than three months; provided that, in the case of the Bank of Madras, the directors may discount negotiable securities payable in Ceylon having a period to run not exceeding four months.

11. Until the expiration of at least fourteen days after notice has been given by notification of the Government to be payable at Banks.

Governor General in Council published, in the case of the Bank of Bengal, in the *Gazette of India* and the *Calcutta Gazette*, and in the cases of the Bank of Madras and the Bank of Bombay, in the local official Gazette, that the Bank will no longer act as banker for, or pay, receive, collect or remit money, bullion and securities on behalf of the Government,

all sums payable by or to the Secretary of State for India in Council, or by or to the Governor General in Council, or the Government of Bengal or the Governor of Fort St. George in Council or the Governor of Bombay in Council, on behalf of the Secretary of State for India in Council, at the General Treasury of Fort William in Bengal, or at the General Treasury at Madras, or at the General Treasury at Bombay,

shall be payable—

in the case of the Secretary of State for India in Council, or the Governor General in Council—at the office of the Bank of Bengal, the Bank of Madras, or the Bank of Bombay, as the case may be,

in the case of the Government of Bengal—at the office of the Bank of Bengal ;

in the case of the Governor of Fort St. George in Council—at the office of the Bank of Madras ; and

in the case of the Governor of Bombay in Council—at the office of the Bank of Bombay.

12. Whenever presentment of any promissory note, bond or other security

Presentment of promissory notes at Banks. for payment or any other purpose at any of the said General Treasuries would heretofore have been necessary or sufficient, presentment for such purpose shall be necessary or sufficient (as the case may be) until the expiration of fourteen days after the giving of the notice mentioned in section eleven—

in the case of the General Treasury of Fort William—at the office of the Bank of Bengal ;

in the case of the General Treasury at Madras—at the office of the Bank of Madras ; and

in the case of the General Treasury at Bombay—at the office of the Bank of Bombay.

Nothing in this section shall render it necessary to present at the office of the Bank of Bengal, the Bank of Madras, or the Bank of Bombay any security which need not have been presented at one of the said General Treasuries.

13. The office of the Bank of Bengal shall be at Calcutta, that of the Bank of Madras shall be at Madras, and that of the Bank of Bombay shall be in the Island of Bombay;

and the business of the Bank shall be carried on at its office, and, subject to the provisions of section fifteen, at such other place or places in India as the Board may deem advisable.

14. For the purpose of providing offices and places in and at which to carry on and manage the business of the Bank, the directors may—

(a) hire, take, or acquire by purchase, lease or otherwise, lands, houses or buildings, on such terms, as they may from time to time think advisable;

(b) build on any land hired, taken or acquired as aforesaid, or pull down, alter, remove or convert any such houses or buildings, and erect and build other houses and buildings in lieu thereof on any such land;

(c) fit up, furnish, repair and insure against loss by fire all or any of such houses or buildings; and let, or give possession of, the whole or any part of the same, whether fitted up or furnished, or otherwise, to such person, and on such terms as they consider advisable with regard to the interests of the Bank, and the promotion or carrying on of its business;

(d) sell and buy in any such lands, houses or buildings as aforesaid, and resell the same, and otherwise deal with all or any part of the same as they may consider most conducive to the interests of the Bank.

15. It shall be lawful for the directors to maintain as branches or agencies of the Bank, any branches or agencies of the present Banks, which may be in existence on the first day of March 1876,

and, from time to time, to establish branches or agencies at such places within the Presidency in which the Bank is situate as they deem advantageous to the interest of the Bank,

and, with the previous consent of the Governor General in Council, and subject to such restrictions as to the business to be transacted as he thinks fit in each case to impose (such consent and restrictions being notified in the *Gazette of India*), to establish branches or agencies at such places outside the Presidency in which the Bank is situate, as the directors deem advantageous for the interests of the Bank:

Provided that the agency of the Bank of Bengal now established in Bombay shall not advance or lend money, or open cash-credits on securities, or receive deposits and keep cash-accounts, or discount bills of exchange drawn and payable in the Presidency of Bombay,

and shall not act as agent on commission, or transact any business except as agent of the same Bank, or any of its branches or other agencies.

The directors may discontinue any branch or agency maintained or established under this section.

16. The directors may, if authorized to do so by a special resolution, from time to time, purchase the business of any other Bank in British India, of which the capital is divided into shares, upon such terms as may be agreed on in each case, and may pay for any business so purchased either in cash, or in shares, or partly in cash or partly in shares, and, for that purpose, may increase, within the limits prescribed by section seventeen, the capital of the Bank by the issue of such number of shares as may be determined on.

The shareholders or proprietors of the purchased Bank to whom such new shares are allotted shall be shareholders of the Bank, and be in all respects in the same position as if they had respectively subscribed and paid for the shares so allotted to them.

The business so purchased shall, after the purchase, be carried on by the Bank with, and subject to, the several restrictions contained in this Act.

#### CHAPTER IV.

##### CAPITAL.

17. The capital of the Bank of Bengal shall consist of twenty millions of rupees in shares of five hundred rupees each, divisible into half shares, with power to increase the same, in manner hereinafter provided, to thirty millions of rupees.

The capital of the Bank of Madras shall consist of five millions six hundred and twenty thousand five hundred rupees, in shares of five hundred rupees each, divisible into half shares, with power to increase the same, in manner hereinafter provided, to twelve millions of rupees.

The capital of the Bank of Bombay shall consist of ten millions of rupees in shares of five hundred rupees each, divisible into half shares, with power to increase the same, in manner hereinafter provided, to twenty millions of rupees.

18. The capital of the said New Bank of Bombay, Limited, already created, shall, on the first day of March 1876, constitute the capital of the Bank of Bombay, subject to be increased as aforesaid.

19. Any shareholder may from time to time surrender his wholly paid-up shares, or any of them, to the directors, and demand and receive from the Bank, in lieu thereof, capital stock to the like amount as represented by the shares so surrendered,

and any proprietor may from time to time surrender his stock, or any portion thereof, to the directors, and demand and receive from the Bank in lieu thereof shares to the like amount, or as near thereto as practicable.



20. The proprietors and shareholders of the Bank may from time to time by special resolution and with the previous sanction of the Governor General in Council increase or reduce the capital of the Bank:

Provided that no such special resolution shall be deemed to have been passed, unless at least one-half in number of the shareholders or proprietors, holding at least one-half of the paid-up capital of the Bank for the time being, be present in person or by proxy, and a majority poll by open voting in favour of the said resolution.

21. When any such special resolution to increase the capital has been passed, the directors may, subject to the provisions of this or any other Act for the time being in force regulating such Bank, and to the special direction (if any) given in reference thereto by the meeting at which such resolution has been passed,

(a) make such orders as they think fit for the opening of subscriptions towards such increase of capital by the proprietors and shareholders;

(b) allow to the proprietors and shareholders such period to fill up the subscription as to the directors seems fit;

(c) prescribe the manner in which the proprietors and shareholders shall subscribe and pay into the Bank the proportions of new capital which they may respectively desire to subscribe; and

(d) make such orders as the directors think fit for the disposal and allotment of the amount of new capital that may not be subscribed for and paid up in manner aforesaid:

Provided that the capital, including any increase therein that may be made under section sixteen, shall not exceed, in the case of the Bank of Bengal, thirty millions of rupees, in the case of the Bank of Madras, twelve millions of rupees, and in the case of the Bank of Bombay, twenty millions of rupees.

22. When any such special resolution to reduce the capital has been passed, the directors may (subject as aforesaid) prescribe the manner in which the reduction shall be carried into effect.

23. Any new capital created under the provisions of section twenty shall be subject to the provisions of this or any other Act regulating the Bank in force for the time being.

#### CHAPTER V.

##### FORFEITURE OF STOCK AND SHARES.

24. If any proprietor or shareholder become indebted to the Bank, the Bank may withhold payment of the dividends on the stock or shares of such proprietor or shareholder registered as his own property, and not as held in trust, or as executor or administrator, until payment of such debt, and apply such dividends in or towards payment thereof;

and, after demand and default of payment, and notice in that behalf given to such proprietor or

shareholder, or his constituted agent, or by public advertisement in the local official Gazette, the Bank may refuse to register the transfer of any such stock or shares until payment of such debt;

and, if the same remain unpaid for the space of three months after such notice, the Bank may advertise in the local official Gazette such stock or shares for sale on a day not less than fifteen days from the publication of such advertisement;

and may, on such day, sell by public auction such stock or shares, or so much or so many thereof as may be necessary, and apply the proceeds thereof in or towards payment of the said debt, with interest, from the day appointed for the payment of such debt to the time of actual payment, at such rate as may have been agreed upon, or, in the absence of such agreement, at the highest rate current for advances by way of local discounts by the Bank;

and shall pay over the surplus, if any, to such proprietor or shareholder or to his lawful representative.

and the purchasers of all stock or shares sold under this section shall upon payment of the consideration therefor be registered as proprietors or shareholders in respect of such stock or shares, and all such stock and shares shall be subject to the other provisions of this or any other Act regulating the Bank in force for the time being.

#### CHAPTER VI.

##### CERTIFICATES, TRANSFER AND TRANSMISSION OF SHARES AND STOCK.

25. Every shareholder shall be entitled to a certificate, under the corporate seal of the Bank, and signed by two Directors and the Secretary and Treasurer, specifying the shares held by him, and in the case of shares which are not wholly paid up, the amount paid thereon,

and any holder of more than one half share may, at his option, demand a certificate for each such half share, or one or more certificates for all or any of such half shares, and such certificate or certificates shall be delivered to him accordingly: provided that the number of such certificates shall in no case exceed the number of half shares in respect of which they are so delivered.

Every proprietor of capital stock shall be entitled to a receipt signed by two directors and the Secretary and Treasurer, and specifying the amount of stock held by him and any such proprietor may, at his option, demand one receipt for the whole of the stock, or separate receipts for any portions of the stock, so held by him, and such receipt or receipts shall be delivered to him accordingly: Provided that no receipt shall be delivered for a portion of stock less than two hundred and fifty rupees.

For every certificate and receipt delivered under this section there shall be paid such fee as may for the time being be prescribed under section sixty-three: Provided that no fee shall be payable for certificates or receipts delivered to the persons referred to in section four for shares in or stock of the Bank.

Every such certificate and receipt shall be *prima facie* evidence of the title of the shareholder or proprietor to the shares or stock therein specified.

Certificates and receipts to be evidence.

26. The stock and shares of every proprietor and shareholder shall be moveable property, capable of being transferred in manner provided by the regulations contained herein, or in any other Act regulating the Bank for the time being in force, and shall not be of the nature of immoveable property; and each share shall be distinguished by its appropriate number.

Stock and shares to be moveable property.

27. Every transfer of stock or shares shall be in such form as the Board from time to time may approve, and shall be presented to the Bank accompanied by such evidence as the Board may require to prove the title of the transferor.

Form of transfer to be approved by Board.

Every such transfer shall be verified in manner as the Board require, and the Board may refuse to register any such transfer until the same be so verified, and, in the case of shares not fully paid up, unless the transferee is approved by the Board.

Board may require evidence of transmission.

The Board may refuse to register any transfer of stock or shares registered as the property of any proprietor or shareholder and not as held in trust or as executor or administrator, whilst such proprietor or shareholder is either alone, or jointly with any other person, indebted to the Bank on any account.

Board may decline to register certain transfers.

The transferor shall be deemed to remain the proprietor or holder of the stock or shares transferred until the name of the transferee is registered in respect thereof.

Transferor to remain proprietor till transfer registered.

28. The directors may from time to time close the register and transfer-books of the Bank for any period or periods not exceeding in the whole thirty days in any twelve consecutive months.

Power to close transfer-books.

29. The proprietors and shareholders for the time being, and no other persons, shall be members respectively of the bodies corporate hereby constituted,

and, save as provided by section twenty-four, the Bank shall not be bound or affected by notice of any trust to which any stock or share may be subject in the hands of the proprietor or holder thereof;

Notice of trusts.

and when any stock or share is vested in more than one proprietor or holder, such proprietors or shareholders shall, as between themselves and the Bank, be considered as joint tenants with benefit of survivorship:

Shares vested in several holders.

Provided that, as regards voting at meetings, service of notices, and receipt of dividend, the person first named in the register may, at the option of the Board, be deemed the sole holder of such stock or share.

30. When, by the death of any proprietor or shareholder, his stock or shares shall devolve on his legal representative, the Bank shall not be bound to recognise any legal representative of such deceased proprietor or shareholder other than a person who has taken out probate to the will, or letters of administration to the estate, of the deceased—

Recognition of legal representatives of deceased shareholders.

in the case of the Bank of Bengal, from the High Court of Judicature at Fort William;

in the case of the Bank of Madras, from the High Court of Judicature at Madras; and

in the case of the Bank of Bombay, from the High Court of Judicature at Bombay;

in the case of any of the said Banks, a probate granted by any of the said High Courts and taking effect throughout the whole of British India;

or who has obtained a certificate in respect of the estate of the deceased under Act No. XXVII of 1860, or any other Act relating to the collection of debts on successions, describing such stock or shares, from a Court of competent jurisdiction within the Presidency of Fort William, the Presidency of Madras, or the Presidency of Bombay, as the case may be.

31. Any person becoming entitled to stock or shares in consequence of the bankruptcy or insolvency of any proprietor or shareholder, or in consequence of the marriage of any female proprietor or shareholder, may be registered as a proprietor or shareholder upon such evidence being produced as the directors may from time to time require.

Transmission on insolvency or marriage.

## CHAPTER VII.

### DIRECTORS.

32. The business of the Bank shall be managed by the Board, which shall in the first instance consist of six directors, and may subsequently consist of such number, not less than six, and not more than nine, as may be fixed by a special resolution.

Such directors shall be selected by vote of a general or special meeting.

Three of the directors shall form a quorum for the transaction of business.

Quorum.

33. The persons who, on the first day of March 1876, are respectively directors of the Bank of Bengal, the Bank of Madras, and the New Bank of Bombay, Limited, shall be respectively directors of the Bank of Bengal, the Bank of Madras, and the Bank of Bombay, as constituted by this Act, subject to removal as hereinafter provided and to the other provisions herein contained.

Present directors to be continued.

34. The two directors who have been longest in office shall go out of office at the general meeting.

Any director so retiring shall be eligible for re-election at such meeting, and, if any question arise as to which of the directors who have been the same time in office shall retire, such question shall be decided by the directors by ballot.

Two directors to go out by rotation annually.



**35. Clause 1.**—No person shall be eligible or qualified to serve as a director of a Bank who is not a proprietor or holder in his own right of unencumbered stock or shares of such Bank, to the amount of ten thousand rupees at the least.

**Clause 2.**—No person shall be eligible or qualified to serve as a director—

If he holds the office of director, provisional director, promoter, agent or manager of any other Bank established, or having a branch or agency, in British India; or advertised as about to be established, or to have a branch or agency, in British India;

If he is a Judge of any High Court; or

If he is a salaried officer of Government not specially authorised by the Governor General in Council to serve as a director;

And the office of director shall be vacated—

If the person holding it accepts or holds any other office of profit under the Bank;

If he becomes bankrupt or insolvent, or compounds with his creditors;

If he is declared lunatic, or becomes of unsound mind;

If he is absent from the Board for more than three consecutive months;

If he ceases to hold in his own right the amount or number of stock or shares required to qualify him for the office.

**Clause 3.**—No two persons who are partners of the same mercantile firm, or one of whom is the general agent of, or holds a power of procuration from, the other or from a mercantile firm of which the other is a partner, shall be eligible or qualified to serve as directors at the same time.

**Clause 4.**—The proprietors or shareholders may, by a special resolution passed by the votes of proprietors or shareholders holding in the aggregate not less than one-half of the capital, remove any director before the expiration of his period of office, and appoint, in his stead, a qualified person, who shall in all respects stand in his place.

**36.** At the first meeting of the directors in every year, they shall choose a president and vice-president from among themselves, and whenever the office of president or vice-president becomes vacant, they shall, at their next meeting, choose a successor for the remainder of the current year.

The president, or in his absence the vice-president, shall be chairman at all meetings whether of directors or of proprietors or shareholders, or of proprietors and shareholders, and shall have an additional or casting vote in all cases of an equal division of votes. Provided that if both the president and vice-president be absent at any meeting the directors present shall elect a chairman for such meeting from among themselves, and such chairman shall, in case of an equal division of votes, have an additional or casting vote.

**37.** The Board shall have power at any time, and from time to time, to supply any vacancies in their number arising from the death, resignation, or disqualification under section thirty-four, of any director, or from his temporary absence from the Board exceeding one month.

Any director so appointed shall, for the purposes of section thirty-four, be considered to have held office from the date on which the director in whose place he is appointed was elected, or (where such director was appointed under this section) from the date on which his mediate or immediate predecessor was elected.

**38.** All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as a director, shall, notwithstanding it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

## CHAPTER VIII.

### OFFICERS OF THE BANK.

**39.** The directors shall have power—

to appoint such officers, clerks and servants as may be necessary to conduct the business of the Bank,

to fix the salaries of such officers, clerks and servants, and

to suspend or remove any officer, clerk or servant of the Bank.

**40.** The Secretary and Treasurer and Secretary of the Bank are hereby severally empowered for and on behalf of the Bank to endorse and transfer promissory notes, stock-receipts, stock, debentures, shares, securities, and documents of title to goods, standing in the name of, or held by, the Bank,

and to draw, accept and endorse bills of exchange, bank post-bills, and letters of credit, in the current and authorized business of the Bank, and to sign all other accounts, receipts and documents connected with such business.

**41.** No Secretary and Treasurer, Secretary, Inspector, Agent, Manager, or Accountant, in the service of the Bank, and no Khazanchi or Shroff in the service of the Bank at the principal office,

and, without the previous sanction of the Board, no Khazanchi or Shroff at any branch or agency of the Bank,

shall engage in any other banking or commercial business, either on his own account or as agent for any other person or persons, or shall act as broker for the sale or purchase of Government or other securities.

**42.** Every person appointed to hold, or act in, any one or more of the said offices, and every other officer from whom the directors may from time to

time think fit to require it, shall give security to the directors, for the faithful discharge of his duty to the satisfaction of the directors, in such amount and in such manner as they think proper.

The security to be given as aforesaid by the person holding or acting in the office of Secretary and Treasurer shall not be in a less amount than fifty thousand rupees.

#### CHAPTER IX.

##### ACCOUNTS AND DIVIDENDS.

43. The directors shall cause the books of the Bank to be balanced on every thirty-first day of December and every thirtieth day of June.

A statement of the balance at every such period, signed by a majority of the directors, shall be forthwith sent to a Secretary to the Government of India, and in the cases of the Bank of Madras and the Bank of Bombay, also to a Secretary to the Local Government.

The Governor General in Council in the case of each of the said Banks, and the Local Government in the case of the Bank of Madras and the Bank of Bombay, shall (so long as any such arrangement with the Government as aforesaid, which has already been, or shall hereafter be, entered into remains in force) at all times be entitled to require of the directors any information touching the affairs of the Bank and the production of any document of the Bank,

and in the case of each of the said Banks the Governor General in Council may require the publication of such statements of its assets and liabilities at such intervals and in such form and manner as the Governor General in Council thinks fit.

Every requisition under this section shall be signified in writing under the hand of a Secretary to the Government of India or to the Local Government (as the case may be), and the directors shall comply with every such requisition.

44. An account of the profits of the Bank during the previous half-year shall be taken on or immediately after every thirty-first day of December and every thirtieth day of June,

and a dividend thereof shall be made as soon thereafter as conveniently may be,

and the amount of such dividend shall be determined by the directors, subject to the provisions of section forty-five;

No unpaid dividend shall bear interest as against the Bank.

45. The directors, before declaring any dividend, may set aside out of the profits of the Bank such a sum as they think proper as a reserve-fund, and invest the same upon any of the securities specified in section nine, paragraph (a), clauses (1), (2), (3) and (4).

46. The directors may from time to time apply such portion as they think fit of the reserve-fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining the buildings and business premises of the

Bank, or any part thereof, or for any other purposes of the Bank, which they from time to time deem expedient.

#### CHAPTER X.

##### AUDIT.

47. Two auditors shall be elected and their remuneration fixed at the annual general meeting.

The auditors may be proprietors or shareholders; but no person shall be elected auditor who is interested, otherwise than as a proprietor, shareholder or depositor, in any transaction of the Bank; and no director or other officer of the Company is eligible during his continuance in office.

Auditors re-eligible. Any auditor shall be re-eligible on his quitting office.

The persons who shall be auditors on the first day of March 1876, and all auditors elected under this section, shall severally be and continue to act as auditors until the first general meeting after their respective elections:

Provided that if any casual vacancy occurs in the office of any auditor, the directors shall forthwith call a special meeting for the purpose of supplying the same.

48. Every auditor shall be supplied with a copy of the half-yearly balance-sheet, and it shall be his duty to examine the same, with the accounts and vouchers relating thereto.

Every auditor shall have a list delivered to him of all books kept by the Bank, and shall at all reasonable times have access to the books and accounts of the Bank, and may (at the expense of the Bank) employ accountants or other persons to assist him in investigating such accounts, and may, in relation to such accounts, examine the directors or any other officer of the Bank.

The auditors shall make a report to the proprietors and shareholders upon the annual balance-sheet and accounts; and in every such report they shall state whether, in their opinion, the balance-sheet is a full and fair balance-sheet containing the particulars required by the bye-laws made under this Act and properly drawn up so as to exhibit a true and correct view of the state of the Bank's affairs, and in case they have called for any explanation or information from the directors, whether it has been given by the directors and whether it has been satisfactory.

Such report shall be read together with the report of the directors at the annual general meeting.

#### CHAPTER XI.

##### MEETINGS.

49. On the first Monday of the month of August in every year, or as soon after such day as is convenient, a general meeting shall be held, at which the directors shall submit to the proprietors and shareholders a statement of the affairs of the Bank made up to the preceding thirtieth day of June.



A notice convening such meeting, signed by the Secretary and Treasurer, shall be published in the local official Gazette, and in the case of the Bank of Bengal also in the *Gazette of India*, at least fifteen days before the meeting is held.

50. Any ten or more proprietors or shareholders holding stock or shares, or both, to the aggregate amount of fifty thousand rupees, or any three directors, may convene a special meeting upon giving fifteen days' previous notice of such meeting, and of the purpose for which the same is convened, as well to the directors as also by public advertisement in the local official Gazette, and in two of the English and one of the Vernacular daily newspapers;

Provided that three months' previous notice shall be thus given of any special meeting held for the purpose of increasing or reducing the capital of the Bank.

51. No business shall be transacted at any meeting, whether general or special, unless a quorum of twenty proprietors or shareholders, or both, in person or by proxy, is present at the commencement of such business.

If within one hour from the time appointed for the meeting a quorum is not present, the meeting, if convened by proprietors or shareholders not being directors, shall be dissolved: in any other case it shall stand adjourned to the same day in the following week at the same time and place, and if at such adjourned meeting a quorum is not present it shall be adjourned *sine die*.

52. At meetings whether general or special, every election and other matter submitted to the meeting shall be decided by a majority of votes, except as in section twenty and in section thirty-five, clause 4, is specially provided,

and no person shall be allowed to vote at any such meeting in respect of any stock or share acquired by transfer, unless such transfer shall have been completed and registered at least three months before the time of such meeting.

And no shareholder shall be entitled to vote at any meeting in respect of any shares held by him alone or jointly, whilst any call due from him alone or jointly remains unpaid.

53. A declaration by the chairman of any meeting, except a special meeting held under section twenty, that a resolution has been carried thereat upon a show of hands, shall be conclusive, and an entry to that effect in the book of proceedings of the Bank shall be sufficient evidence of that fact, without proof of the number or proportion of the votes recorded in favour of, or against, such resolution, unless, immediately on such declaration, a poll be demanded in writing by five proprietors or shareholders present and entitled to vote at such meeting.

54. If a poll be demanded, it shall be taken at such time and place, and (except at the special meeting last aforesaid) either by open voting or by ballot, as the chairman directs,

and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

55. The proceedings at any meeting, and all resolutions and decisions of such meeting, shall be valid and binding on the Bank, so far as such proceedings, resolutions and decisions are consistent with the provisions of this or any other Act for the time being in force and regulating the Bank.

56. At all such meetings, the proprietors or shareholders shall vote according to the following scale:—

The proprietor of capital stock amounting to Rs. 2,000, or the holder of shares of which the total nominal amounts are equal to Rs. 2,000, shall be entitled to	1 vote.
The proprietor of capital stock amounting to Rs. 10,000, or the holder of shares of which the total nominal amounts are equal to Rs. 10,000, shall be entitled to	2 votes.
The proprietor of capital stock amounting to Rs. 20,000, or the holder of shares of which the total nominal amounts are equal to Rs. 20,000, shall be entitled to	3 "
The proprietor of capital stock amounting to Rs. 30,000, or the holder of shares of which the total nominal amounts are equal to Rs. 30,000, shall be entitled to	4 "
The proprietor of capital stock amounting to Rs. 40,000, or the holder of shares of which the total nominal amounts are equal to Rs. 40,000, shall be entitled to	5 "
The proprietor of capital stock amounting to Rs. 50,000, or the holder of shares of which the total nominal amounts are equal to Rs. 50,000, shall be entitled to	6 "
The proprietor of capital stock amounting to Rs. 60,000, or the holder of shares of which the total nominal amounts are equal to Rs. 60,000, shall be entitled to	7 "

Where a person is both a proprietor of stock and a holder of shares, his shares shall, for the purpose of this section, be deemed to be stock.

No proprietor or shareholder shall be entitled to more than seven votes at any such meeting.

57. Any proprietor or shareholder entitled to vote at any meeting under this Act may give a proxy in writing, either general or special, under his hand or the hand of his attorney duly authorized, to any other proprietor or shareholder.

Such proxy shall be produced at the time of voting, and shall entitle the person to whom it is given to vote on such matters as shall be authorized by the tenor of such proxy.

But no person shall be permitted to vote in virtue of such proxy unless it has been left for registration at the office of the Bank at least three clear days before the time for holding the meeting at which it is intended to be used:

Provided that a general proxy which has been registered at such office need not be again left for registration previous to any subsequent meeting.

Proxies existing and in force with reference to any of the present Banks, on the first day of March 1876, shall continue in force and be available at meetings under this Act, anything herein contained notwithstanding.

58. If any proprietor or shareholder is a lunatic or idiot, he may vote by his committee or other legal curator, and if any proprietor or shareholder is a minor, he may vote by his guardian, or any one of his guardians, if more than one.

Voting by lunatic and minor shareholders.

## CHAPTER XII.

### NOTICES.

59. Every notice or other document requiring to be served by the Bank upon any proprietor or shareholder may be served either personally, or by leaving it for, or sending it through the post by registered letter addressed to, him at his registered place of abode;

and every notice sent through the post shall be deemed to have been served at the time at which, in the usual course of post, it would have been delivered.

60. Every notice to be given on the part of any proprietor or shareholder shall be left at the office of the Bank, or sent through the post by registered letter addressed to the Secretary and Treasurer of the Bank at its principal office.

Notices by shareholders.

61. Every person who by operation of law, transfers or otherwise becomes entitled to any stock or shares, shall be bound by any and every notice or other document which, previously to his name and address being entered upon the register of the Bank in respect of such stock or shares, has been given to the person from whom he derives his title thereto.

Shareholder bound by notices, to previous holders.

62. When any notice or document is delivered or sent, in accordance with this Act, at or to the registered place of abode of a proprietor or shareholder, then, and notwithstanding he be then deceased, and whether or not the Bank have notice of his decease, such service of the notice or other document shall, for all purposes of this Act, be deemed service thereof on him, or, if dead, on his heirs, executors, administrators, and every of them.

Service of notices good notwithstanding shareholder's death.

## CHAPTER XIII.

### BYE-LAWS.

63. The directors may from time to time make bye-laws, regulating the following matters or any of them:—

Power of directors to make bye-laws.

(a) the distribution of business amongst the directors,

(b) their remuneration,

(c) the delegation of any powers of the directors to committees consisting of members of their body,

(d) the procedure at the meetings of the board or of any committee of the directors,

(e) the bills which may be discounted and the amount which may be advanced by way of discount,

(f) the limits for advances and the conditions on which they may be made,

(g) the circumstances under which alone advances may be made to directors or officers of the Bank, or the relatives of such directors or officers, or to companies, firms or individuals with which or with whom such directors, officers, or relatives are connected as partners, directors, managers, servants, shareholders, or otherwise,

(h) the books and accounts to be kept at the head and other offices respectively,

(i) the reports and statements to be prepared and made by the Chief Accountant, the heads of departments, and the other officers of the Bank,

(j) the particulars to be contained in the half-yearly balance-sheet,

(k) the proportion which the reserve fund must bear to the paid-up capital at the time of declaring or paying any dividend,

(l) the management of the branches and agencies,

(m) the fees payable for certificates of shares or receipts for stock, or for registration of transfers of shares or stock,

(n) the renewal of certificates of shares and receipts for stock, which have been worn-out or lost,

(o) and, generally, for the conduct of the business of the Bank;

and the proprietors and shareholders may, from time to time, at any meeting, whether general or special, make bye-laws regulating the matters mentioned in clauses (a) to (o), both inclusive, of this section, and otherwise for the direction of the affairs of the Bank, and the same shall be binding on the directors and officers, and on the proprietors and shareholders, until rescinded or varied at any subsequent meeting:

Provided that no bye-law, or alteration or rescission of any bye-law, whether made by the directors or by the proprietors and shareholders, shall be of any validity, except in so far as the same is consistent with the provisions of this Act, and has been previously approved by the Governor General in Council, and such approval has been signified in writing under the hand of a Secretary to the Government of India.

Proviso.

## CHAPTER XIV.

### MISCELLANEOUS.

64. The directors may institute, conduct, defend, compromise, refer to arbitration and abandon legal and other proceedings and claims by or against the Bank or the directors or officers of the Bank, and otherwise concerning its affairs.

Power to institute and compromise suits.

65. In any suit brought against any shareholder to recover any debt due for any call or other monies due from him in his character of shareholder, it shall be sufficient to allege that the defendant is a shareholder of the Bank, and is indebted to the Bank in respect of a call made or other monies due, whereby a right to sue has accrued to the Bank;

and, on the hearing of any suit to be brought by the Bank against any shareholder to recover



any debt due for any call, it shall be sufficient to prove that the name of the defendant is on the register of shareholders of the Bank as the holder of the shares in respect of which such debt accrued, and that the call was made, and that notice of such call was duly given to the defendant in pursuance of this or any other Act for the time being in force regulating the Bank;

and it shall not be necessary to prove the appointment of the directors who made such call, nor that a quorum of directors was present at the Board at which such call was made, nor that the meeting at which it was made was duly convened or constituted.

66. Nothing in the Thirty-third of George the Third, session two, chapter fifty-two, shall be deemed to render it unlawful for any servant of Government, or for any Judge of a High Court, to become a member of any corporation established under this Act.

67. And whereas the Government of India has agreed to sell, and the directors of the present Bank of Bengal have agreed to purchase, at a premium of twenty-two and a half per centum, the said two thousand two hundred shares of one thousand rupees each held by the Government of India in the same Bank; and it is intended that the directors of the Bank of Bengal as constituted by this Act shall cancel two thousand of such shares, and sell for the benefit of the Bank four hundred shares in the same Bank corresponding with the remaining two hundred shares so agreed to be sold and purchased;

And whereas the Government of India has agreed to sell, and the directors of the present Bank of Madras have agreed to purchase, at a premium of ten per centum, the said five hundred and sixty-two and a half shares held by the Government of India in the same Bank: and it is intended that the directors of the Bank of Madras as constituted by this Act shall cancel the same shares;

And whereas the said respective directors of the present Bank of Bengal and Bank of Madras had no power to enter into the said agreements, and the directors of the Bank of Bengal as constituted by this Act have no power to sell the four hundred shares referred to in this section;

And whereas the respective directors of the Bank of Bengal and Bank of Madras as constituted by this Act have no power to cancel the said two thousand shares or the said five hundred and sixty-two and a half shares;

And whereas it is expedient to confirm the said agreements, and to indemnify the said respective directors of the present Bank of Bengal and Bank of Madras for entering into the same, and to empower the directors of the Bank of Bengal as constituted by this Act to sell the said four hundred shares, and to empower the respective directors of the Bank of Bengal and Bank of Madras as constituted by this Act to cancel the said shares so intended to be cancelled; It is hereby further enacted as follows:—

(a).—The said agreements are hereby confirmed, and the said respective directors of the present Bank of Bengal and Bank of Madras are hereby indemnified for entering into the same; and no suit or other proceeding shall be maintained against any such director in respect of any thing *bonâ fide* done in pursuance of either of such agreements.

(b).—The directors of the Bank of Bengal as constituted by this Act shall have power to sell, and shall, as soon as conveniently may be, sell, the said four hundred shares, either together or in parcels, and either by public auction or private

contract, and shall apply the proceeds in or towards paying the price of the shares of the Government of India so agreed to be purchased by the directors of the present Bank as aforesaid, or otherwise for the benefit of the Bank of Bengal as constituted by this Act.

(c).—The directors of the Bank of Bengal as constituted by this Act shall have power to cancel, and shall, as soon as conveniently may be, cancel, the said two thousand shares, and the directors of the Bank of Madras as constituted by this Act shall have power to cancel, and shall, as soon as conveniently may be, cancel, the said five hundred and sixty-two and a half shares.

## SCHEDULE.

(SEE SECTION 2.)

### Part I.—Statute.

Number and year.	Abbreviated title.	Extent of repeal.
47 George III, sess. 2, cap. 68.	An Act for the better government of the Settlements of Fort St. George and Bombay, &c.	Sections eight, nine, and ten.

### Part II.—Acts of the Governor General in Council.

Number and year.	Title.	Extent of repeal.
IV of 1862	An Act for regulating the Bank of Bengal.	The whole.
V of 1862	An Act to provide for the payment at the Banks of Bengal, Madras and Bombay, of monies payable at the General Treasuries of Calcutta, Madras and Bombay.	The whole.
VI of 1862	An Act to annex a schedule to Act IV of 1862.	The whole.
XXIX of 1863	An Act to declare the receipts of the Banks of Bengal, Madras and Bombay to be sufficient in lieu of the receipts of the Sub-Treasurers of Fort William, Fort St. George and Bombay, respectively.	The whole.
XIX of 1870	An Act to enable the Directors of the Bank of Bengal to act by a quorum.	The whole.

*Part III.—Acts of the Governor of Fort St. George in Council.*

Number and year.	Title.	Extent of repeal.
VI of 1866	An Act for repealing Madras Act V of 1862, and for regulating the Bank of Madras.	The whole.
I of 1871	An Act to amend Madras Act VI of 1866, to give validity to certain acts done by the Directors of the Bank of Madras, and to enable outgoing Directors to be re-elected.	The whole.

*Part IV.—Acts of the Governor of Bombay in Council.*

Number and year.	Title.	Extent of repeal.
X of 1863	An Act for the Re-incorporation and re-constitution of the Bank of Bombay.	The whole.
XV of 1866	An Act to amend Act No. X of 1863 (Bombay).	The whole.
I of 1867	An Act to reduce the amount of the capital of the Bank of Bombay and of the shares thereon, and to amend Act X of 1863 and Act XV of 1863 (Bombay).	The whole.

## STATEMENT OF OBJECTS AND REASONS.

The Government of India is a shareholder in the Banks of Bengal and Madras, and it appoints certain of the directors, and may vote by proxy at the meetings of the proprietors.

The Government has, however, determined to sell its shares and to surrender its powers of appointing directors and voting. As those powers are conferred by Acts of Indian legislatures, and as some of the arrangements connected with the sale are beyond the powers of the directors, the present Bill is necessary.

The opportunity has been taken to repeal the present law on the subject, to consolidate the Acts relating to the Banks of Bengal and Madras, and to incorporate the New Bank of Bombay, Limited.

At the same time the Bill proposes to make certain changes, of which the following are the principal:—

(a). The capital of the Bank of Bengal will be reduced from Rs. 22,000,000 to Rs. 20,000,000, and that of the Bank of Madras from Rs. 5,625,000 to Rs. 5,062,500.

(b). The capital of those two Banks, which is now divided into shares of Rs. 1,000 each, will be divided into shares of only Rs. 500 each.

(c). The kinds of business which the Banks may transact are increased in number. They are empowered to lend upon the security of debentures of Indian municipalities, on goods the documents of title to which are assigned to the Banks as security, and on negotiable securities which, under the provisions of the proposed Act, may be discounted. They may also lend to the Governor General in Council without any specific security. On the other hand, they are expressly forbidden to make loans for a longer period than three months; to make unsecured loans to the same person or firm for more than six lakhs of rupees; to discount any negotiable security, payable where it is presented for discount, which does not carry on it the several responsibilities of at least two persons or firms unconnected in general partnership; or to discount negotiable securities having a longer period to run than three months, except in the case of the Bank of Madras, which may discount such securities payable in Ceylon and running for four months.

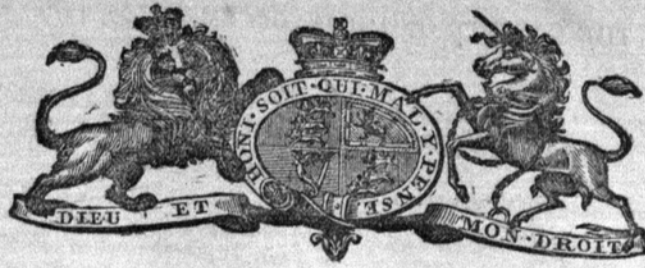
The Banks, as constituted by the proposed Act, will still be empowered to act as bankers for the Government of India; and though the Government will cease to have any direct pecuniary concern in the Banks, the interests of the public are so largely involved in their careful management, that it has been thought right to provide (a) that the capital of the Banks shall not be increased or diminished without the previous sanction of the Governor General in Council; (b) that the Governor General in Council in the case of each of the three Banks, the Local Government in the case of the Banks of Madras and Bombay, shall be entitled to require information touching the affairs of the Bank and the publication of statements of assets and liabilities; and (c) that the previous approval of the Government of India shall be required to validate bye-laws.

CALCUTTA,  
The 7th December 1875. }

W. MUIR.

WHITLEY STOKES,  
Secy. to the Govt. of India.





# The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, DECEMBER 25, 1875. { Register  
No. 75.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

## PART V.

Bills introduced into the Council of the Governor General for making  
Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

### LEGISLATIVE DEPARTMENT.

[Third Publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 7th December 1875, and was referred to a Select Committee with instructions to make their report thereon in three months:—

No. 13 OF 1875.

### THE SPECIFIC RELIEF BILL, 1876.

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## SCHEDULE.—Enactments repealed.

*A Bill to define and amend the Law relating to certain kinds of specific Relief.*

WHEREAS it is expedient to define and amend the law relating to certain kinds of specific relief obtainable in civil suits ; It is hereby enacted as follows :—

## PART I.

## PRELIMINARY.

1. This Act may be called “ The Specific Relief Act, 1876 : ”

Short title. Act, 1876 : ”  
It extends to the whole of British India, except the Scheduled Districts as defined in Act No. XIV of 1874 ;

Local extent.  
And it shall come into force three months after the passing thereof.

Commencement.  
2. The enactments specified in the schedule hereto annexed are repealed to the extent mentioned in its third column.

Repeal of enactments.  
3. In this Act, unless there be something repugnant in the subject or context,—

Interpretation-clause.  
‘ discretion ’ means a sound and reasonable discretion, exercised according to the rules for the time being in force in the Courts of Civil Judicature :

‘ obligation ’ includes every duty the breach of which is punishable by law :

‘ agreement ’ includes also an award and an obligation constructively created by operation of law :

‘ trust ’ includes every species of express, implied, or constructive fiduciary ownership :

‘ trustee ’ includes every person holding, expressly, by implication, or constructively, a fiduciary character :

## Illustrations.

(a). Z bequeaths land to A, ‘ not doubting that he will pay thereout an annuity of Rs. 1,000 to B for his life.’ A is a trustee within the meaning of this Act for B to the extent of the annuity.

(b). A is the legal, medical, or spiritual adviser of B. A gains some pecuniary advantage by availing himself of his situation as such adviser. A is a trustee within the meaning of this Act of such advantage.

(c). A, being B’s banker, discloses for his own purposes the state of B’s account. A is a trustee within the meaning of this Act of the benefit gained by him by means of such disclosure.

(d). A, the mortgagee of certain leaseholds, renews the lease in his own name. A is a trustee within the meaning of this Act of the renewed lease.



(e). A, one of several partners, is employed to purchase goods for the firm. A, unknown to his co-partners, supplies them, at the market-price, with goods previously bought by himself when the price was lower, and thus makes a considerable profit. A is a trustee within the meaning of this Act of the profit so made.

(f). A buys certain land with notice that B has already contracted to buy it. A is a trustee within the meaning of this Act of the land so bought.

(g). A buys land from B, having notice that C is in occupation of the land. A omits to make any inquiry as to the nature of C's interest therein. A is a trustee within the meaning of this Act to the extent of that interest.

'settlement' means any instrument (other than a will or codicil) whereby the destination or devolution of moveable or immoveable property is settled or agreed to be settled.

4. Except so far as they are embodied in this Act, the provisions of the English law how far inapplicable. law of England shall not be applicable to the kinds of relief hereinafter mentioned.

Except where it is herein otherwise expressly enacted, nothing in this Act shall be deemed—

(a) to give any right to relief in respect of any agreement which, according to the general law applicable to contracts, is not a valid contract: or

(b) to deprive any person of any right to relief other than specific performance which, according to the same law, he may have under any contract.

Specific relief how given. 5. Specific relief is given—

(a) by taking possession of certain property and delivering it to a claimant;

(b) by ordering a party to do the very act which he is under an obligation to do;

(c) by prohibiting a party from doing that which he is under an obligation not to do; or

(d) by declaring and determining the rights of parties otherwise than by an award of compensation.

6. Relief granted under clause (c) of section five is called preventive relief. Preventive relief.

7. Specific or preventive relief cannot be granted for the mere purpose of enforcing a penal law. Purposes for which relief cannot be given.

## PART II.

### OF SPECIFIC RELIEF.

#### CHAPTER I.

##### OF RECOVERING POSSESSION OF PROPERTY.

##### (a).—Possession of Immoveable Property.

8. A person entitled to specific immoveable property may recover it in the manner prescribed by the Code of Civil Procedure. Recovery of specific immoveable property.

9. If any person is dispossessed without his consent of immoveable property otherwise than in due course of law, he or any person claiming through him may, by suit instituted within six months from the date of the dispossession, recover possession thereof, notwithstanding any other title that may be set up in such suit. Suit by person dispossessed of immoveable property.

Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.

Nothing in this section applies to immoveable property claimed to belong to the Crown.

##### (b).—Possession of Moveable Property.

10. A person entitled to the immediate possession of specific moveable property may recover the same in the manner prescribed by the Code of Civil Procedure. Recovery of specific moveable property.

EXPLANATION 1.—A trustee may sue under this section for the possession of property to the beneficial interest in which another is entitled.

EXPLANATION 2.—A special or temporary right to the present possession of property is sufficient to support a suit under this section.

##### Illustrations.

(a). A bequeaths land to B for his life, with remainder to C. A dies. B enters on the land, but C, without B's consent, obtains possession of the title-deeds. B may recover them from C.

(b). A pledges certain jewels to B to secure a loan. B disposes of them before he is entitled to do so. A, without having paid or tendered the amount of the loan, sues B for possession of the jewels. The suit should be dismissed, as A is not entitled to their possession, whatever right he may have to secure their safe custody.

(c). A receives a letter addressed to him by B. B gets back the letter without A's consent. A has such a property therein as entitles him to recover it from B.

(d). A deposits books and papers for safe custody with B. B loses them and C finds them, but refuses to deliver them to B when demanded. B may recover them from C, subject to C's right, if any, under section 168 of the Indian Contract Act, 1872.

(e). A, a warehouse-keeper, is charged with the delivery of certain goods to Z, which B takes out of A's possession. A may sue B for the goods.

11. Any person having the possession or control of a particular article of moveable property, of which he is not the owner, may be compelled specifically to deliver it to the person entitled to its immediate possession, in any of the following cases:—

(a) when the thing claimed is held by the defendant as the agent or trustee of the claimant;

(b) when compensation in money would not afford the claimant adequate relief for the loss of the thing claimed;

(c) when it would be extremely difficult to ascertain the actual damage caused by its loss.

##### Illustrations.

(a). A, proceeding to Europe, leaves his furniture in charge of B as his agent during his absence. B, without A's authority, pledges the furniture to C, and C, knowing that B had no right to pledge the furniture, advertises it for sale. C may be compelled to deliver the furniture to A, for he holds it as A's trustee.

(b). A, a colliery-owner, keeps for the purpose of his business fifty coal-wagons. A sells B 50,000 tons of coal and lets to him the wagons to convey the coal. B, without A's authority, pledges the wagons to C, who threatens to sell them immediately. C may be compelled to deliver the wagons to A, for they are necessary for conducting his business, and their loss would cause him an injury for which money would not be an adequate compensation.

(c). A is entitled to a picture by a dead painter and a pair of rare China vases. B has possession of them. The articles are of too special a character to bear an ascertainable market-value. B may be compelled to deliver them to A.

## CHAPTER II.

## OF THE SPECIFIC PERFORMANCE OF AGREEMENTS.

(a). *Agreements which may be specifically enforced.*

12. Except as otherwise provided in this chapter, the specific performance of any agreement may in the discretion of the Court be enforced—

Cases in which specific performance enforceable

(a) when it has been expressly agreed in writing between the parties to the agreement that specific performance thereof may be required by either party, or that compensation in money shall not be considered adequate relief for its non-performance:

(b) when the act agreed to be done is in the performance, wholly or partly, of a trust:

(c) when there exists no standard for ascertaining the actual damage caused by the non-performance of the act agreed to be done: or

(d) when the act agreed to be done is such that pecuniary compensation for its non-performance would not afford adequate relief:

(e) when it is probable that pecuniary compensation cannot be got for the non-performance of the act agreed to be done.

EXPLANATION.—Unless and until the contrary is shewn, it is to be presumed that the breach of an agreement to transfer immoveable property cannot be adequately relieved by compensation in money, and that the breach of an agreement to transfer moveable property can be thus relieved.

*Illustrations.*

(a). A holds certain stock in trust for B. A wrongfully disposes of the stock. The law creates an obligation on A to restore the same quantity of stock to B, and B may enforce specific performance of this obligation.

(b). A sells 500 tons of iron stacked on his wharf to B, in consideration of a bill accepted by C, and undertakes in writing to deliver the iron to bearer, he (A) 'having been paid for the same.' B mortgages the iron to D. The bill is dishonoured. A refuses to deliver the iron. A holds the iron as a trustee for D, and D may compel him specifically to perform his agreement.

(c). A agrees to buy, and B agrees to sell, a picture by a dead painter and two rare China vases. The articles are of too special a character to bear an ascertainable market-value. A may compel B specifically to perform this agreement, for it would be extremely difficult to ascertain the actual damage caused by its non-performance.

(d). A transfers without endorsement, but for valuable consideration, a note to B. A becomes insolvent, and C is appointed his assignee. B may compel C to endorse the note, for C has succeeded to A's liabilities, and a decree for pecuniary compensation for not endorsing the note would be fruitless.

(e). A, B and C agree to enter into partnership for a definite term under the style of A & Co. A refuses to carry out the agreement. B and C may compel A to join them in executing a proper partnership-deed, for the interest of B and C in the performance of the agreement cannot be adequately compensated for by money.

(f). A agrees with B to sell him a house for Rs. 1,000. B is entitled to a decree directing A to convey the house to him, he paying the purchase-money.

(g). In consideration of being released from certain obligations imposed on it by its Act of incorporation, a railway company agree with Z to make and maintain an archway through their railway to connect lands of Z severed by the railway, to construct a road between certain specified points, to pay a certain annual sum towards the maintenance of this road, and also to construct and maintain a siding and a wharf as specified in the agreement. Z is entitled to have this agreement specifically enforced, for his interest in its performance cannot be adequately compensated for by money; and the Court may appoint a proper person to superintend the construction of the archway, road, siding and wharf.

(h). A agrees to sell, and B agrees to buy, a certain number of railway-shares of a particular description. A refuses to complete the purchase. B may compel A specifically to perform this agreement, for the shares are limited in number and not always to be had in the market, and their possession carries with it the status of a shareholder, which cannot otherwise be procured.

(i). A agrees with B to paint a picture for B, who agrees to pay therefor rupees 1,000. The picture is painted. B is entitled to have it delivered to him on payment or tender of the rupees 1,000.

(j). A advances Rs. 10,000 to B, and B agrees to execute a mortgage of certain houses 'with an immediate power of sale' to secure the repayment of the advance. A requires B either to pay off the advance at once or to execute the mortgage. B refuses. A is entitled to have the agreement specifically performed.

13. When either of the parties to an agreement is entitled to a specific performance thereof according to the provisions of section twelve, the other party is also entitled to it, though not within those provisions.

*Illustration.*

A agrees to sell, and B agrees to buy, a patent for 10,000 rupees. B declines to complete the purchase. Here, though pecuniary compensation for its non-performance might afford A adequate relief, A may enforce the agreement specifically, for, if he had declined to complete it, B would have been entitled to a specific performance thereof.

14. Where a party to an agreement is unable to perform the whole of the agreement, but the part which must be left unperformed bears only a small proportion to the whole in value, and admits of compensation in money, the Court may, at the suit of either party, direct the specific performance of so much of the agreement as can be performed, and award compensation in money for the deficiency.

*Illustrations.*

(a). A agrees to sell B a piece of land consisting of 100 bighás. It turns out that 98 bighás of the land belong to A, and the two remaining bighás to a stranger, who refuses to part with them. The two bighás are not necessary for the use or enjoyment of the 98 bighás, and the loss of them may be made good in money. A may be directed at the suit of B to convey to B the 98 bighás and to make compensation to him for not conveying the two remaining bighás; or B may be directed, at the suit of A, to pay to A on receiving the conveyance and possession of the land, the stipulated purchase-money, less a sum awarded as compensation for the deficiency.

(b). In a contract for the sale and purchase of a house and lands for two lákhs of rupees it is agreed that part of the furniture should be taken at a valuation. The Court may direct specific performance of the contract notwithstanding the parties are unable to agree as to the valuation of the furniture, and may either have the furniture valued in the suit and include it in the decree for specific performance, or may confine its decree to the house.

15. Where a party to an agreement is unable to perform the whole of the agreement and the part which must be left unperformed forms a considerable portion of the whole, or does not admit of compensation in money, the party in default is not entitled to obtain a decree for specific performance. But the Court may, at the suit of the other party, direct the party in default to perform specifically so much of the agreement as he can perform, provided that the party seeking specific performance relinquishes all claim to further performance, and all right to compensation, either for the deficiency, or for the loss or damage sustained by him through the default of the other party.



*Illustrations.*

(a). A agrees to sell to B a piece of land consisting of 100 bighás. It turns out that 50 bighás of the land belong to A, and the other 50 bighás to a stranger, who refuses to part with them. A cannot obtain a decree against B for the specific performance of the contract; but if B is willing to pay the price agreed upon, and to take the 50 bighás which belong to A, waiving all right to compensation either for the deficiency or for loss sustained by him through A's neglect or default, B is entitled to a decree directing A to convey those 50 bighás to him on payment of the purchase-money.

(b). A agrees to sell to B an estate with a house and garden for 1,00,000 rupees. It turns out that A is unable to convey the garden. A cannot obtain a decree against B for the specific performance of the contract; but if B is willing to pay the price agreed upon, and to take the estate and house without the garden, waiving all right to compensation either for the deficiency or for loss sustained by him through A's neglect or default, B is entitled to a decree, directing A to convey the house to him on payment of the purchase-money.

16. Except in cases coming under one or other Bar in other cases of of the two last preceding specific performance of sections, it is not competent part of agreement. for the Court to direct the specific performance of a part of an agreement.

17. Where a person agrees to sell or let Purchaser's rights certain property, having only against vendor with im- an imperfect title thereto, perfect title. the purchaser or lessee (except as otherwise provided by this chapter) has the following rights:—

(a) if the vendor or lessor has subsequently acquired any interest in the property, the purchaser or lessee may compel him to make good the agreement out of such interest;

(b) where the concurrence of other persons is necessary to validate the title, and they are bound to convey at the vendor's or lessor's request, the purchaser or lessee may compel him to procure such concurrence;

(c) where the vendor professes to sell unincumbered property, but the property is mortgaged for an amount not exceeding the purchase-money, and the vendor has in fact only a right to redeem it, the purchaser may compel him to redeem the mortgage and obtain a conveyance from the mortgagee;

(d) where the vendor or lessor sues for specific performance of the agreement, and the suit is dismissed on the ground of his imperfect title, the defendant has a right to a return of his deposit (if any) with interest thereon, to the costs of the suit, and to a lien for such deposit, interest and costs on the property agreed to be sold or let.

18. Any person suing for the specific performance of an agreement, may Power to award compensation in certain cases. also ask for compensation for its breach, either in addition to, or in substitution for, such performance.

If in any such suit the Court decides that specific performance ought not to be granted, but that there is a valid agreement between the parties which has been broken by the defendant and that the plaintiff is entitled to compensation for that breach, it shall award him compensation accordingly.

If in any such suit the Court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case,

and that some compensation for breach of the agreement should also be made to the plaintiff, it shall award him such compensation accordingly.

Compensation awarded under this section may be assessed in such manner as the Court may direct.

EXPLANATION.—The circumstance that the agreement has become incapable of specific performance does not preclude the Court from exercising the jurisdiction conferred by this section.

*Illustrations.*

(a). A, a purchaser, sues B, his vendor, for specific performance of an agreement for the sale of a patent. Before the hearing of the suit, the patent expires. The Court may award A compensation for the non-performance of the agreement.

(b). A agrees with B to sell him a house for Rs. 1,000 the price to be paid and the possession given on the 1st January 1876. A fails to perform his part of the agreement, and B brings his suit for specific performance, which is decided in his favour on the 1st January 1877. The decree may, besides ordering specific performance, award to B compensation for any loss or damage which he has sustained by A's refusal.

(c). A sues for the specific performance of a resolution passed by the directors of a public company, under which he was entitled to have a certain number of shares allotted to him. All the shares had been allotted before the institution of the suit. The Court may, under this section, award A compensation for the non-performance.

(d). A contracts to sell a hundred maunds of rice to B. B brings a suit to compel A to perform the agreement or to pay compensation. The Court is of opinion that A has made a valid contract and has broken it without excuse to the injury of B, but that specific performance is not the proper remedy. It shall award to B such compensation as it deems just.

19. An agreement, otherwise proper to be specifically enforced, may be Liquidation of damages thus enforced, though a sum not a bar to specific performance. be named in the agreement as the amount to be paid in case of its breach, and the party in default is willing to pay the same.

*Illustration.*

A agrees to grant B an underlease of property held by A under C, and covenants that if C refuses to grant a license necessary for that purpose, A will pay B Rs. 10,000. A refuses to apply for the license and offers to pay B the Rs. 10,000. B is nevertheless entitled to have the agreement specifically enforced.

(b). Agreements which cannot be specifically enforced.

20. The following agreements cannot be specifically enforced:—

- (a) an agreement for the breach of which compensation could not be recovered;
- (b) an agreement for the non-performance of which compensation in money is an adequate relief, and which does not come within section twelve, clause (a);
- (c) an agreement which runs into such minute or numerous details, or which from its nature is such, that the Court cannot enforce specific performance of all its material terms;
- (d) an agreement which is in its nature revocable;
- (e) an agreement entered into by trustees either in excess of their powers or in breach of their trust;
- (f) an agreement entered into by or on behalf of a corporation or public company created for special purposes, or by the promoters of such company, which is in excess of its powers;

- (g) an agreement the performance of which involves the performance of a continuous duty extending over a longer period than five years from its date;
- (h) an agreement to submit a controversy to arbitration.

#### Illustrations.

To (a).—A agrees in consideration of Rs. 500 to obtain an office under the Crown for B. This agreement cannot be specifically enforced.

A, a banker holding bills as a security for advances to B, takes a guarantee from B's brother, C, that the loss to the bank should not exceed Rs. 20,000. This transaction took place after B had commenced proceedings for the liquidation of his affairs and unknown to his other creditors with a view to prevent A from opposing a composition. The guarantee cannot be specifically enforced, as the transaction would have the effect of giving A an undue advantage over B's other creditors.

A, a military pensioner of Government, in consideration of Rs. 500, agrees to assign to B all future payments in respect of his pension. This agreement cannot be specifically enforced.

A husband and wife, professing the Christian religion, enter into an agreement providing for their future separation. This agreement cannot be specifically enforced.

A agrees to grant B a lease of a certain house. The length of the term to be granted is not stated, nor the date at which it is to commence. This agreement cannot be specifically enforced.

A agrees with B to take from B a lease of a certain house for a specified term, at a specified rent, "if the drawing-room is handsomely decorated." This agreement cannot be specifically enforced.

Z, a resident in Calcutta, agrees, as trustee for B, a resident in Australia, to sell to C an annuity to which B is entitled for his life. The day before the date of the agreement B had died. Z cannot enforce this agreement.

A, the lessee of a house much out of repair, agrees to sell the lease to B. Before the sale, A receives from his landlord a notice of re-entry in default of the premises being repaired. A does not communicate this notice to B, who enters and is ejected in consequence of the non-repair. A cannot enforce the agreement against B.

A, the owner of a patent, agrees to sell it to B. B institutes a suit to compel specific performance of this agreement. Before the suit is heard the patent expires. Specific performance of the agreement cannot be compelled.

On A's marriage with B, A's father, C, agrees with B's father, D, to settle certain lands on A and his children by B. D sues C to enforce specific performance of this agreement. C proves that the agreement was conditional on D settling a lakh of rupees on A and his children by B, and that D had not settled such lakh accordingly. The suit must be dismissed.

A, an author, agrees with B, a publisher, to complete a literary work, and dies before doing so. The agreement requiring A's personal skill and taste is discharged by his death, and B cannot enforce its performance as against A's representative.

A, a shoemaker, agrees with B to receive B's son as an apprentice for a term of years and teach him shoemaking. A dies before the expiration of the term. B cannot enforce performance of the agreement.

A and B enter into an agreement to become partners for a term and afterwards agree to rescind it.

A agrees to buy B's business at the amount of a valuation to be made by two valuers, one to be named by A and the other by B. A and B each name a valuer, but before the valuation is made A instructs his valuer not to proceed.

A agrees to buy certain houses in Calcutta, and before the completion of the agreement becomes insolvent. A's assignee, in exercise of his option under the Indian Insolvent Act, abandons the agreement.

In none of these cases can the agreement be specifically enforced.

To (b).—A agrees to sell, and B agrees to buy, a lakh of rupees in the four per cent. loan of the Government of India.

A agrees to sell, and B agrees to buy, 40 chests of indigo at Rs. 1,000 per chest.

In consideration of certain property having been transferred by A to B, B agrees to open a credit in A's favour to the extent of Rs. 10,000, and to honour A's drafts to that amount.

These agreements cannot be specifically enforced, for, in the first and the second both A and B, and in the third A, would be reimbursed by compensation in money.

To (c).—A agrees to render personal service to B.

A agrees to employ B on personal service.

By a charter party entered into in Calcutta between A, the owner of a ship, and B, the charterer, it is agreed that the ship shall proceed to Rangoon, and there load a cargo of rice, and thence proceed to London, freight to be paid, one-third on arrival at Rangoon, and two-thirds on delivery of the cargo in London.

These agreements cannot be specifically performed.

A lets land to B and B agrees to cultivate it in a particular manner for three years next after the date of the lease. A is not entitled to have this agreement specifically performed.

A and B agree that in consideration of annual advances to be made by A, B will for three years next after the date of the agreement grow particular crops on the land in his possession and deliver them to A when out and ready for delivery. A is not entitled to have this agreement specifically performed.

A agrees with B that in consideration of Rs. 1,000 to be paid to him by B, he will paint a picture for B.

A agrees with B to execute certain works which the Court cannot superintend.

A agrees to supply B with all the goods of a certain class which B may require.

These agreements cannot be specifically enforced.

To (d).—A and B agree to become partners in a certain business, the agreement not specifying the duration of the proposed partnership. This agreement cannot be specifically performed, for, if it were so performed, either A or B might at once dissolve the partnership.

To (e).—A is a trustee of land with power to lease it for seven years. He enters into an agreement with B to grant a lease of the land for seven years, with a covenant to renew the lease at the expiry of the term. This agreement cannot be specifically enforced.

The directors of a company have power to sell the concern with the sanction of a general meeting of the shareholders. They contract to sell it without any such sanction. This contract cannot be specifically enforced.

Two trustees, A and B, empowered to sell trust-property worth a lakh of rupees, agree to sell it to C for Rs. 30,000. The agreement is so disadvantageous as to be a breach of trust. C cannot enforce its specific performance.

The promoters of a company for working mines agree that the company, when formed, shall purchase certain mineral property. They take no proper precautions to ascertain the value of such property and in fact agree to pay an extravagant price therefor. They also stipulate that the vendors shall give them a bonus out of the purchase-money. This contract cannot be specifically enforced.

To (f).—A railway company contracts for the purchase of a piece of land for the purpose of erecting a cotton-mill thereon. This contract cannot be specifically enforced.

To (g).—A agrees to let for twenty-one years to B the right to use such part of a certain railway made by A as was upon B's land, and that B should have a right of running carriages over the whole line on certain terms, and might require A to supply the necessary engine-power, and that A should during the term keep the whole railway in good repair. Specific performance of this contract must be refused to B.

#### (c). Of the Discretion of the Court.

21. The jurisdiction to decree specific performance is discretionary, and Discretion as to decreeing specific performance. the Court is not bound to grant such relief, merely because it is lawful to do so; but the discretion of the Court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a Court of appeal.



The following are cases in which the Court may properly exercise a discretion not to decree specific performance:—

I. Where, though it is clear that an agreement has been made and broken, the Court cannot find, with reasonable certainty, what are the terms of the agreement of which specific performance is sought.

*Illustration.*

(a). A, the owner of a refreshment-room, agrees with B to give him accommodation there for the sale of his goods and to furnish him with the necessary appliances. A refuses to perform his agreement. The case is one for compensation and not for specific performance, the amount and nature of the accommodation and appliances being undefined.

II. Where the circumstances under which the agreement is made are such as to give the plaintiff an unfair advantage over the defendant, though there may be no fraud or misrepresentation on the plaintiff's part.

*Illustrations.*

(b). A tenant for life of certain property assigns his interest therein to B. C agrees to buy, and B agrees to sell, that interest. Before the contract is completed, A receives a mortal injury from the effects of which he dies the day after the contract is completed. If B and C were equally ignorant or equally aware of the fact, B is entitled to specific performance. If B knew the fact and C did not, specific performance should be refused to B.

(c). A agrees to sell to B the interest of C in certain stock-in-trade. It is stipulated that the sale shall stand good, even though it should turn out that C's interest is worth nothing. In fact the value of C's interest depends on the result of certain partnership-accounts, on which he is heavily in debt to his partners. This indebtedness is known to A, but not to B. Specific performance of the agreement should be refused to A.

(d). A agrees to sell, and B agrees to buy, certain land. To protect the land from floods, it is necessary for its owner to maintain an expensive embankment. B does not know of this circumstance, and A industriously conceals it from him. Specific performance should be refused to B.

(e). A's property is put up to auction in one lot. B requests C, A's attorney, to bid for him. C does this inadvertently and in good faith. The persons present seeing the vendor's attorney bidding, think that he is a mere puffer and cease to compete. The lot is knocked down to B at a low price. Specific performance should be refused to B.

(f). A contracts with B who at the time is intoxicated. Specific performance should be refused to A.

III. Where the performance of the agreement would involve some hardship on the defendant which he did not foresee, whereas no such hardship would fall on the plaintiff if the agreement was not performed.

*Illustrations.*

(g). A is entitled to some land under his father's will on condition that, if he sells it within twenty-five years, half the purchase-money shall go to B. A, forgetting the condition, agrees, before the expiration of the twenty-five years, to sell the land to C. Here, the enforcement of the agreement would operate so harshly on A, that the Court will not compel its specific performance in favour of C.

(h). A and B, trustees, join their beneficiary, C, in an agreement to sell the trust-estate to D, and personally agree to exonerate the estate from heavy incumbrances to which it is subject. The purchase-money is not nearly enough to discharge those incumbrances, though, at the date of the agreement, the vendors believed it to be sufficient. Specific performance of the agreement should be refused to D.

(i). A, the owner of an estate, agrees to sell it to B, and stipulates that he, A, shall not be obliged to define its boundary. The estate really comprises a valuable property not known to either to be part of it. Specific performance of the agreement should be refused to B unless he waives his claim to the unknown property.

(j). A agrees with B to sell him certain land, and to make a road to it from a certain railway-station. It is found afterwards that A cannot make the road without exposing

himself to litigation. Specific performance of the part of the agreement relating to the road should be refused to B, though he may be entitled to specific performance of the rest with compensation for loss of the road.

(k). A, a lessee of mines, agrees with B, his lessor, that at any time during the continuance of the lease B may give notice of his desire to take the machinery and plant used in and about the mines, and that he shall have the articles specified in his notice delivered to him at a valuation on the expiry of the lease. Such a contract might be most injurious to the lessee's business, and specific performance should be refused to B.

(l). A agrees to buy certain land from B. The agreement is silent as to access to the land. No right of way to it can be shown to exist. Specific performance of the contract should be refused to B.

(m). A agrees with B to buy from B's manufactory and not elsewhere all the goods of a certain class used by A in his trade. The Court cannot compel B to supply the goods, but if he does not supply them, A may be ruined unless he is allowed to buy them elsewhere. Specific performance of the agreement should be refused to B.

IV. The circumstance that the plaintiff has done substantial acts or suffered losses in consequence of an agreement susceptible of specific performance is one which the Court may reasonably consider in exercising its discretion to grant specific performance of such agreement.

*Illustration.*

A sells land to a railway company who agree to execute certain works for his convenience. The company take the land and use it for their railway. Specific performance of the agreement to execute the works should be awarded in favour of A.

(d.) *For whom Agreements may be specifically enforced.*

22. Except as otherwise provided by this chapter, the specific performance of an agreement may be obtained by—

Who may obtain specific performance.

(a) any party thereto:

(b) the representative in interest, or the principal, of any party thereto: provided that, where the learning, skill, solvency or any personal quality of such party is a material ingredient in the agreement, or where the agreement provides that his interest shall not be assigned, his representative in interest or principal shall not be entitled to specific performance of the agreement:

(c) where the agreement is a settlement on marriage, any person beneficially entitled thereunder:

(d) where the agreement has been entered into by a tenant for life in due exercise of a power, the remainderman:

(e) a reversioner in possession, where the agreement is a covenant entered into with his predecessor in title and the reversioner is entitled to the benefit of such covenant:

(f) a reversioner in remainder, where the agreement is such a covenant, and the reversioner is entitled to the benefit thereof and will sustain material injury by reason of its breach:

(g) when a public company has entered into an agreement and subsequently becomes amalgamated with another public company, the new company which arises out of the amalgamation:

(h) when the promoters of a public company have, before its incorporation, entered into an agreement for the purposes of the company, and such agreement is warranted by the terms of the incorporation, the company.

(e). *For whom Agreements cannot be specifically enforced.*

23. An agreement for the sale or letting of property cannot be specifically enforced in favour of a vendor or lessor—  
 Agreement to sell property by one who has no title or who is a voluntary settlor.

(a) who, knowing himself not to have any title to the property, has agreed to sell or let the same ;

(b) who, though he entered into the agreement believing that he had a good title to the property, cannot at the time fixed by the parties or by the Court for the completion of the sale or letting give the purchaser or lessee a title free from reasonable doubt ;

(c) who, previous to entering into the agreement, has made a voluntary settlement of the subject-matter thereof.

*Illustrations.*

(a). A agrees to sell to B an estate which A knows to belong to C. A cannot enforce specific performance of this agreement, even though C is willing to confirm it.

(b). A bequeaths his land to trustees, declaring that they should not sell it without the consent in writing of his sons and daughters. A dies. Then one of his daughters dies. The trustees then enter into an agreement with B to sell him the land. B refuses to carry out the agreement. The trustees cannot specifically enforce this agreement, as the title which they can give B is not free from reasonable doubt.

(c). A makes a voluntary settlement of certain property on his brothers and their issue, and afterwards enters into an agreement to sell the property to a stranger. A cannot enforce specific performance of this agreement so as to override the settlement and thus prejudice the interests of the persons claiming under it.

24. Specific performance of an agreement cannot be enforced in favour of a party—  
 Personal bars to the relief.

(a) who could not recover compensation for its breach ;

(b) who has become incapable of performing, or violates, any essential term of the agreement that on his part remains to be performed ; or

(c) who has already chosen his remedy and obtained satisfaction for the alleged breach of contract ;

(d) who, previously to entering into the agreement, had notice that a voluntary settlement of the subject-matter thereof had been made and was then in force.

*Illustrations.*

(a). A agrees to sell B a house and to become tenant thereof for a term of 14 years from the date of the sale at a specified yearly rent. A becomes insolvent. Neither he nor his assignee can enforce specific performance of the agreement. Neither can B, although he might recover compensation from A's assignee for breach of the agreement.

(b). A agrees to sell B a house and garden in which there are ornamental trees, a material element in the value of the property as a residence. A without B's consent fells the trees. A cannot enforce specific performance of the agreement.

(c). A, holding land under an agreement with B for a lease, commits waste, or treats the land in an unhusbandlike manner. A cannot enforce the agreement.

(d). A agrees to let, and B agrees to take, an unfinished house, B agreeing to finish the house and the lease to contain covenants on the part of A to keep the house in repair. B finishes the house in a very defective manner: he cannot enforce the agreement, though A and B may sue each other for compensation for breach of the agreement.

(e). A agrees to let, and B agrees to take, a house for a specified term at a specified rent. B refuses to perform the agreement. A thereupon sues for and obtains compensation for the breach of contract. A cannot obtain specific performance of the agreement.

(f). *For whom Agreements cannot be specifically enforced except with a variation.*

25. Where a plaintiff seeks specific performance of an agreement in writing, to which the defendant sets up a variation, the plaintiff cannot obtain the performance sought except with the variation so set up, in the following cases (namely) :—

(a) where by fraud or mistake of fact the agreement of which performance is sought is in terms different from that which the defendant supposed it to be when he entered into it ;

(b) where by fraud, mistake of fact, or surprise the defendant entered into the agreement under a reasonable misapprehension as to its effect as between himself and the plaintiff ;

(c) where the defendant, knowing the terms of the agreement and understanding its effect, has entered into it relying upon some misrepresentation by the plaintiff, or upon some stipulation on the plaintiff's part, which goes to vary the agreement, but which he refuses to fulfil ;

(d) where the parties have varied the agreement subsequently to its execution.

*Illustrations.*

(a). A, B and C sign a writing by which each agrees to enter into a bond to D for Rs. 1,000. In a suit by D, to make A, B and C separately liable each to the extent of Rs. 1,000, they prove that the word 'each' was inserted by mistake ; that the intention was that they should give a joint bond for Rs. 1,000. A can obtain the performance sought only with the variation thus set up.

(b). A sues B to compel specific performance of an agreement in writing to buy a dwelling-house. B proves that he assumed that the agreement included an adjoining yard, and the agreement was so framed as to leave it doubtful whether the yard was so included or not. The Court will refuse to enforce the agreement, except with the variation set up by B.

(c). A agrees in writing to let to B a wharf, together with a strip of A's land delineated in a map. Before signing the agreement, B proposed orally that he should be at liberty to substitute for the strip mentioned in the agreement another strip of A's land of the same dimensions, and to this A expressly assented. B then signed the written agreement. A cannot obtain specific performance of the written agreement except with the variation set up by B.

(d). A agrees in writing to let a house to B, for a certain term, at the rent of Rs. 100 per month, putting it first into tenable repair. The house turns out to be not worth repairing, so with B's consent A pulls it down and erects a new house in its place: B agreeing orally to pay rent at Rs. 120 per mensem. B then sues to compel specific performance of the agreement in writing. He cannot enforce it except with the variations made by the subsequent oral agreement.

(g). *Against whom Agreements may be specifically enforced.*

26. Except as otherwise provided by this chapter, specific performance of an agreement may be enforced against—  
 Relief against parties and persons claiming under them by subsequent title.

(a) either party thereto ;

(b) any other person claiming under him by a title arising subsequently to the agreement, except a transferee for value, who has paid his money in good faith and without notice of the original agreement ;

(c) any person claiming under a title which, though prior to the agreement, and known to the plaintiff, might have been displaced by the defendant ;



(d) when a public company has entered into an agreement, and subsequently becomes amalgamated with another public company, the new company which arises out of the amalgamation;

(e) when the promoters of a public company have, before its incorporation, entered into an agreement, the company: provided that the company has ratified and adopted the agreement and the agreement is warranted by the terms of the incorporation.

#### Illustrations.

(a). A agrees to convey certain land to B by a particular day. A dies intestate before that day without having conveyed the land. B may compel A's heir or other representative in interest to perform the agreement specifically.

(b). A agrees to sell certain land to B for Rs. 5,000. A afterwards conveys the land for Rs. 6,000 to C, who has notice of the original agreement. B may enforce specific performance of the agreement as against C.

(c). A agrees to sell land to B for Rs. 5,000. B takes possession of the land. Afterwards A sells it to C for Rs. 6,000. C makes no enquiry of B relating to his interest in the land. B's possession is sufficient to affect C with notice of his interest, and he may enforce the agreement against C.

(d). A agrees in consideration of Rs. 1,000 to bequeath certain of his lands to B. Immediately after the agreement A dies intestate, and C takes out administration to his estate. B may enforce the agreement against C.

(e). A agrees to sell certain land to B. Before the completion of the agreement, A becomes a lunatic and C is appointed his committee. B may specifically enforce the agreement against C.

(f). A, the tenant for life of an estate, with remainder to B, in due exercise of a power conferred by the settlement under which he is tenant for life, agrees to sell the estate to C, who has notice of the settlement. Before the sale is completed, A dies. C may enforce specific performance of the agreement against B.

(g). A and B are joint tenants of land, his undivided moiety of which either may alien in his lifetime, but which, subject to that right, devolves on the survivor. A agrees to sell his moiety to C and dies. C may enforce specific performance of the agreement against B.

(h). *Against whom Agreements cannot be specifically enforced.*

27. Specific performance of an agreement cannot be enforced against a party thereto in any of the following cases:—

(a) if the consideration to be received by him is so grossly inadequate, with reference to the state of things existing at the date of the agreement, as to be either by itself or coupled with other circumstances evidence of fraud or of undue advantage taken by the plaintiff;

(b) if his assent was obtained by the misrepresentation (whether wilful or innocent), concealment, circumvention, or unfair practices, of any party to whom performance would become due under the contract, or by any promise of such party which has not been substantially fulfilled;

(c) if his assent was given under the influence of mistake of fact, misapprehension or surprise: Provided that, when the agreement provides for compensation in case of mistake, compensation may be made for a mistake within the scope of such provision, and the agreement may be specifically enforced in other respects if proper to be so enforced.

#### Illustrations.

(a). A, one of two executors, in the erroneous belief that he had the authority of his co-executor, enters into an agreement for the sale to B of his testator's property. B cannot insist on the sale being completed.

(b). A directs an auctioneer to sell certain land. A afterwards revokes the auctioneer's authority as to 20 bighás of this land, but the auctioneer inadvertently sells the whole to B, who has not notice of the revocation. B cannot enforce specific performance of the agreement.

(i). *The Effect of dismissing a Suit for Specific Performance.*

28. The dismissal of a suit for specific performance of an agreement shall bar the plaintiff's right to sue for the breach of such agreement.

### CHAPTER III.

#### OF THE RECTIFICATION OF INSTRUMENTS.

29. When through fraud or a mutual mistake of the parties, a contract or other instrument in writing does not truly express the intention of the parties, the Court, on finding it clearly proved—

(a) that there has been fraud or mistake in framing the instrument, and

(b) that the intention of the parties in executing the instrument was as alleged by the plaintiff, may in its discretion rectify the instrument, so as to express that intention, so far as it can be done without prejudice to rights acquired by third persons, in good faith and for value.

#### Illustrations.

(a). A, intending to sell to B his house and one of three godowns adjacent to it, executes a conveyance prepared by B, in which, through B's fraud, all three godowns are included.

Of the two godowns which were fraudulently included, B gives one to C and lets the other to D for a rent, neither C nor D having any knowledge of the fraud.

The conveyance may, as against B and C, be rectified so as to exclude from it the godown given to C; but it cannot be rectified so as to affect D's lease.

(b). By a marriage-settlement, A, the father of B, the intended wife, covenanted with C, the intended husband, to pay to C, his executors, administrators and assigns, during A's life, an annuity of Rs. 5,000. C dies insolvent and the official assignee claims the annuity from A. The Court, on finding it clearly proved that the parties always intended that this annuity should be paid as a provision for B and her children, may rectify the settlement, and decree that the assignee has no right to any part of the annuity.

30. For the purpose of rectifying a contract in writing, it must be presumed that all the parties thereto intended to make an equitable and conscientious agreement.

31. In rectifying a written instrument, the Court may inquire what the instrument was intended to mean, and what were intended to be its legal consequences, and is not confined to the inquiry what the language of the instrument was intended to be.

32. A contract in writing may be first rectified and then, if the plaintiff has so prayed in his plaint and the Court thinks fit, specifically enforced.

#### Illustration.

A agrees in writing to pay his attorney, B, a fixed sum in lieu of costs.

The agreement contains mistakes as to the name and rights of the client, which, if construed strictly, would have excluded B from all rights under the agreement. B is entitled, if the Court thinks fit, to have it rectified, and to an order for payment of the sum, as if at the time of its execution it had expressed the intention of the parties.

## CHAPTER IV.

## OF THE RESCISSION OF CONTRACTS.

**33.** Any person interested in a contract in writing may sue to have it rescinded, and such rescission may be adjudged by the Court, in any of the following cases, namely:—

(a) where the contract is voidable or terminable by the plaintiff;

(b) where the contract is unlawful for causes not apparent on its face, and the defendant is more to blame than the plaintiff;

(c) where a decree for specific performance of a contract of sale, or of a contract to take a lease, has been made, and the purchaser or lessee makes default in payment of the purchase-money or other sums which the Court has ordered him to pay.

**EXPLANATION.**—In the case mentioned in clause (c) of this section, when the purchaser or lessor is in possession of the subject-matter, the Court may also order him to pay to the vendor or lessor the rents and profits, if any, received by him, together with the costs occasioned by the non-completion of the purchase or lease.

*Illustration.*

To (b)—A, an attorney, induces B, his client, to transfer property to him for the purpose of defrauding B's creditors. Here the parties are not equally in fault, and B is entitled to have the instrument of transfer rescinded.

**34.** Rescission of a contract in writing cannot be adjudged for mere mistake, unless the party against whom it is adjudged can be restored to substantially the same position as if the contract had not been made.

**35.** A plaintiff instituting a suit for the specific performance of a contract in writing may pray in the alternative that, if the contract cannot be enforced, it may be rescinded and delivered up to be cancelled.

**36.** On adjudging the rescission of a contract, the Court may require the party to whom such relief is granted to make any compensation to the other which justice may require.

## CHAPTER V.

## OF THE CANCELLATION OF INSTRUMENTS.

**37.** Any person having reasonable apprehension that a written instrument, if left outstanding, may cause serious injury to a person against whom it is void or voidable, may sue to have it so adjudged, and the Court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

*Illustrations.*

(a). A, the owner of a ship, by fraudulently representing her to be seaworthy, induces B, an underwriter, to insure her. B may obtain the cancellation of the policy.

(b). A conveys land to B, who bequeaths it to C and dies. Thereupon, D gets possession of the land, and produces a forged instrument stating that the conveyance was made to B in trust for him. C may obtain the cancellation of the forged instrument.

(c). A, representing that the tenants on his land were all at will, sells it to B, and conveys it to him by an instrument dated the 1st January 1875. Soon after that day, A fraud-

ulently grants to C a lease of part of the lands, dated the 1st October 1874. B may obtain the cancellation of this lease.

(d). A agrees to sell and deliver a ship to B, to be paid for by B's acceptances of four bills of exchange, for sums amounting to Rs. 10,000, to be drawn by A on B. The bills are drawn and accepted, but the ship is not delivered according to the agreement. A sues B on one of the bills. B may obtain the cancellation of all the bills.

**38.** Where an instrument is evidence of different rights or different obligations, the Court may, in a proper case, cancel it in part and allow it to stand for the residue.

*Illustration.*

A draws a bill on B, who endorses it to C, by whom it appears to be endorsed to D, who endorses it to E. C's endorsement is forged. C is entitled to have such endorsement cancelled, leaving the bill to stand as regards A, B, D and E.

**39.** On adjudging the cancellation of an instrument, the Court may require the party to whom such relief is granted to make any compensation to the other which justice may require.

## CHAPTER VI.

## OF DECLARATORY DECREES.

**40.** Any person entitled to any legal character, or to any future right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief.

**EXPLANATION.**—A trustee of property is a person interested to deny a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee.

Provided that no Court shall make any such declaration in any of the following cases:—

(a) where the right as to which the declaration is sought is contingent, or may never arise;

(b) where the plaintiff is in possession of the right which he seeks to have declared;

(c) where the right respecting which the declaration is sought could be enforced by ordinary suit.

**EXPLANATION.**—The presumptive right of a Hindú to property, if he survive the widow of a sonless Hindú, is not within clause (a) of the above proviso.

*Illustrations.*

(a). A bequeaths his property to B, C and D, "to be equally divided amongst all and each of them, if living at the time of my death, then amongst their surviving children." No such children are in existence. In a suit against A's executor, the Court may declare whether B, C and D took the property absolutely, or only for their lives, but it may not declare the interests of the children before their rights are vested.

(b). A covenants that if he should at any time be entitled to property exceeding one lakh of rupees, he will settle it upon certain trusts. Before any such property accrues, or any persons entitled under the trusts are ascertained, he institutes a suit to obtain a declaration that the covenant is void for uncertainty. The Court cannot make the declaration.



(c). The widow of a sonless Hindú alienates part of the property of which she is in possession as such. The person presumptively entitled to possess the property if he survive her, may, in a suit against the alienee, obtain a declaration that the alienation was made without legal necessity and was therefore void beyond the widow's life-time.

(d). A Hindú widow in possession of property, adopts a son to her deceased husband. The person presumptively entitled to possession of the property on her death without a son may, in a suit against the adopted son, obtain a declaration that the adoption was invalid.

(e). A is in possession of certain property. B, alleging that he is the owner of the property, requires A to deliver it to him. This alone is not enough to entitle A to a declaration of his right to hold the property.

(f). A bequeaths property to B for his life, with remainder to B's wife and her children, if any, by B, but if B die without any wife or children, to C. B has a putative wife, D, and children, but C denies that B and D were ever lawfully married. D and her children may, in B's life-time, institute a suit against C and obtain therein a declaration that they are truly the wife and children of B.

41. A declaration made under this chapter is binding only on the parties to the suit, persons claiming through them respectively, and, where any of the parties are trustees, on the persons for whom, if in existence, such parties would be trustees.

#### Illustration.

A, a Hindú, in a suit to which B, his alleged wife, and her mother are defendants, seeks a declaration that his marriage was duly solemnized and an order for the restitution of his conjugal rights. The Court makes the declaration and order. C, claiming that B is his wife, then sues A for the recovery of B. The declaration made in the former suit is not binding upon C.

### CHAPTER VII.

#### OF THE ENFORCEMENT OF PUBLIC DUTIES.

42. Any of the High Courts of Judicature at Port William, Madras and Bombay may, on application, make an order requiring any specific act to be done by any person holding a public office of a permanent nature, or by any corporation or inferior Court of Judicature: provided—

(a) that such act is clearly incumbent on such person or Court in his or its public character, or on such corporation in its corporate character;

(b) that, in the opinion of the High Court, such act is consonant to right and justice;

(c) that the applicant has no other specific and adequate legal remedy; and

(d) that the remedy given by the order applied for will be complete.

Nothing in this section shall be deemed to authorize any High Court—

(e) to make any order binding on the Secretary of State for India in Council, on the Governor General in Council, on the Governor of Madras in Council, on the Governor of Bombay in Council, or on the Lieutenant-Governor of Bengal; or

(f) to make any order on any other servant of the Crown, as such, merely to enforce the satisfaction of a claim upon the Crown.

43. Every application under section forty-two must be founded on an affidavit of the party injured, stating his right in the matter in question, his demand of justice and the denial thereof; and the High Court may, in its discretion, either make the order applied

for absolute in the first instance, or refuse it and grant a rule to show cause why the order applied for should not be made.

If, in the latter case, the party complained of shows no sufficient cause, the High Court may first make an order in the alternative, either to do the act required, or to signify some reason to the contrary and make an answer thereto by such day as the High Court fixes in this behalf.

44. If the person to whom such order is directed makes no answer, or makes an insufficient or a false answer, the High Court may then issue a peremptory order to do the act absolutely.

45. Every order under this chapter shall be executed, and may be appealed from, as if it were a decree made in the exercise of the ordinary original civil jurisdiction of the High Court.

46. The costs of all applications and orders under this chapter shall be in the discretion of the High Court.

47. Neither the High Court nor any Judge thereof shall hereafter issue any writ of *mandamus*.

48. Each of the said High Courts shall, as soon as conveniently may be, frame rules to regulate the procedure under this chapter; and until such rules are framed, the practice of such Court as to applications for and grants of writs of *mandamus* shall apply, so far as may be practicable, to applications and orders under this chapter.

### PART III.

#### OF PREVENTIVE RELIEF.

### CHAPTER VIII.

#### OF INJUNCTIONS GENERALLY.

49. Preventive relief is granted at the discretion of the Court by injunction, temporary or perpetual.

50. Temporary injunctions are such as are to continue until a specified time. They may be granted at any period of a suit, and are regulated by the Code of Civil Procedure.

A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit: the defendant is thereby perpetually enjoined from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff.

### CHAPTER IX.

#### OF PERPETUAL INJUNCTIONS.

51. Subject to the other provisions contained in, or referred to by, this chapter, a perpetual injunction may be granted to prevent the breach of an obligation existing in favour of the applicant, whether express or implied.

When such obligation arises from contract, the Court shall be guided by the rules and provisions contained in chapter II of this Act.

When such obligation arises from an actual or threatened invasion by the defendant of the plaintiff's right to, or enjoyment of, property, the Court may grant a perpetual injunction in the following cases (namely)—

(a) where the parties have expressly agreed in writing that, in case of such invasion, a perpetual injunction may be granted:

(b) where there exists no standard for ascertaining the actual damage caused by the invasion:

(c) where the invasion is such that pecuniary compensation would not afford adequate relief:

(d) where it is probable that pecuniary compensation cannot be got for the invasion:

(e) where the injunction is necessary to prevent a multiplicity of judicial proceedings:

(f) where the obligation arises from a trust.

#### Illustrations.

(a). A lets certain land to B, and B agrees not to dig sand or gravel thereout. A may obtain an injunction to restrain B from digging in violation of his agreement.

(b). A, the owner of two adjoining houses, lets one to B and afterwards lets the other to C. A and C begin to make such alterations in the house let to C as will prevent the comfortable enjoyment of the house let to B. B may obtain an injunction to restrain them from doing so.

(c). A lets certain arable lands to B for purposes of husbandry, but without any express agreement as to the mode of cultivation. Contrary to the mode of cultivation customary in the district, B threatens to sow the lands with seed injurious thereto and requiring many years to eradicate. A may obtain an injunction to restrain B from sowing the lands in contravention of his implied agreement to use them in a husbandlike manner.

(d). A, B and C are partners, the partnership being determinable at will. A threatens to do an act tending to the destruction of the partnership-property. B and C may, without seeking a dissolution of the partnership, obtain an injunction to restrain A from doing the act.

(e). A, a Hindú widow in possession of her deceased husband's property, commits destruction of the property without any cause sufficient to justify her in so doing. The heir expectant may obtain an injunction to restrain her.

(f). A, B and C are members of an undivided Hindú family. A cuts timber growing on the family-property, and threatens to destroy part of the family-house and to sell some of the family-utensils. B and C may obtain an injunction to restrain him.

(g). A, the owner of certain houses in Calcutta, becomes insolvent. B buys them from the official assignee and enters into possession. A persists in trespassing on and damaging the houses, and B is thereby compelled, at considerable expense, to employ men to protect the possession. B may obtain an injunction to restrain further acts of trespass.

(h). The inhabitants of a village claim a right of way over A's land. In a suit against several of them, A obtains a declaratory decree that his land is subject to no such right. Afterwards each of the other villagers sues A for obstructing his alleged right of way over the land. A may obtain an injunction to restrain them.

(i). A, in an administration-suit to which a creditor, B, is not a party, obtains a decree for the administration of C's assets. B proceeds against C's estate for his debt. A may obtain an injunction to restrain B.

(j). A and B are in possession of contiguous lands and of the mines underneath them. A works his mine so as to extend under B's mine and threatens to remove certain pillars which help to support B's mine. B may obtain an injunction to restrain him from so doing.

(k). A rings bells or makes some other unnecessary noise so near a house as to interfere materially and unreasonably with the physical comfort of the occupier, B. B may obtain an injunction restraining A from making the noise.

(l). A pollutes the air with smoke so as to interfere materially with the physical comfort of B and C, who carry on business in a neighbouring house. B and C may obtain an injunction to restrain the pollution.

(m). A builds a house with eaves projecting over B's land. B may obtain an injunction to prevent A from so doing.

(n). A infringes B's patent. If the Court is satisfied that the patent is valid and has been infringed, B may obtain an injunction to restrain the infringement.

(o). A pirates B's copyright. B may obtain an injunction to restrain the piracy, unless the work of which copyright is claimed is libellous or obscene.

(p). A improperly uses the trademark of B. B may obtain an injunction to restrain the user, provided that B's use of the trademark is honest.

(q). In order to sell his goods, A uses marks, labels or descriptions so closely resembling those used by B as to be likely to deceive buyers into thinking that they are actually buying B's goods. B may obtain an injunction to restrain the user, provided his own use of the marks, labels or descriptions be an honest one.

(r). A sells an article called "Mexican Balm", stating that it is compounded of divers rare essences, and has sovereign medicinal qualities. B commences to sell a similar article to which he gives a name and description such as to lead people into the belief that they are buying A's Mexican Balm. A sues B for an injunction to restrain the sale. B shows that A's Mexican Balm consists of nothing but scented hog's lard. A's use of his description is not an honest one and he cannot obtain an injunction.

(s). A trustee threatens a breach of trust. His co-trustees, if any, should and the beneficial owners may, obtain an injunction to prevent the breach.

(t). The directors of a public company are about to pay a dividend out of capital or borrowed money. Any of the shareholders may obtain an injunction to restrain them.

(u). The directors of a fire and life-insurance company are about to engage in marine insurances. Any of the shareholders may obtain an injunction to restrain them.

(v). A, an executor, through misconduct or insolvency, is bringing the property of the deceased into danger. The Court may grant an injunction to restrain him from getting in the assets.

(w). A, a tradesman, holds out B as his partner against the wish and without the authority of B. B may obtain an injunction to restrain A from so doing.

(x). A, a trustee for B, is about to make an imprudent sale of a small part of the trust-property. B may obtain an injunction to restrain the sale, even though compensation in money would have afforded him adequate relief.

(y). A makes a voluntary settlement of an estate on B and his children. A then contracts to sell the estate to C. B or any of his children may obtain an injunction to restrain the sale.

(z). In the course of A's employment as a vakil, certain papers belonging to his client, B, come into his possession. A threatens to make these papers public, or to communicate their contents to a stranger. B may obtain an injunction to restrain A from so doing.

(aa). A mortgages lands to B with the usual power of sale. C and D then recover judgments against A. B exercises the power and threatens to part with the surplus-moneys. As regards these, he is a trustee for A and those claiming under A. C and D may therefore obtain an injunction to restrain B from parting with the surplus.

(bb). A is B's medical adviser. He demands money of B which B declines to pay. A then threatens to make known the effect of B's communications to him as a patient. This is contrary to A's duty, and B may obtain an injunction to restrain him from so doing.

(cc). A, a very eminent man, writes letters on family-topics to B. After the death of A and B, C, who is B's residuary legatee, proposes to make money by publishing A's letters. D, who is A's executor, has a property in the letters, and can obtain an injunction to restrain C from publishing them.

(dd). A carries on a manufactory and B is his assistant. In the course of his business, A imparts to B a secret process of value. B afterwards demands money of A, threatening, in case of refusal, to disclose the process to C, a rival-manufacturer. A can obtain an injunction to restrain B from disclosing the process as being a thing contrary to his duty.



52. When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the Court is capable of enforcing, the Court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts.

*Illustrations.*

(a). A, by new buildings, obstructs lights to the access and use of which B has acquired a right under the Indian Limitation Act, Part IV. B may obtain an injunction not only to restrain A from going on with the buildings, but also to pull down so much of them as obstructs B's lights.

(b). In the case put as illustration (bb) to section 51, the Court may also order all written communications made by B, as patient, to A, as physician, to be destroyed.

(c). In the case put as illustration (cc) to section 51, the Court may also order A's letters to be destroyed.

(d). In the cases put as illustrations (p), (q) and (r) to section 51, the Court may also order the copies produced by piracy, and the trademarks, labels and descriptions improperly used, by A to be destroyed.

Injunction when refused. 53. An injunction cannot be granted—

(a) to stay a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings:

(b) to stay proceedings in a Court superior to that from which the injunction is sought:

(c) to restrain persons from applying to any legislative body:

(d) to interfere with the public duties of any department of the Government of India or the Local Government, or with the sovereign acts of a foreign Government:

(e) to stay proceedings in any criminal matter:

(f) to prevent the breach of an agreement the performance of which would not be specifically enforced:

(g) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance:

(h) to prevent a libel or other act, whether punishable by criminal law or not, which is not an invasion of the plaintiff's right to, or his enjoyment of, property, and is not inconsistent with any contract made by the defendant with the plaintiff, or with any special duty which the defendant owes to the plaintiff:

(i) to prevent a continuing breach in which the applicant has acquiesced:

(j) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding, except in case of breach of trust:

(k) when the conduct of the applicant or his agents has been such as to disentitle him to the assistance of the Court:

(l) where the applicant has no personal interest in the matter.

*Illustrations.*

(a). A being B's neighbour, and having no other relations with him, threatens to publish a statement concerning B which would be punishable under chapter XXI of the

Indian Penal Code. The Court cannot grant an injunction to restrain the publication, even though it may be injurious to B's property.

(b). A, being B's medical adviser, threatens to publish B's communications with him, showing that B has led an immoral life: B may obtain an injunction to restrain the publication.

(c). A applies for an injunction to restrain B from working mines under A's land. It appears that B has been working them with A's permission for eight years. The injunction should be refused.

(d). A seeks an injunction to restrain his partner, B, from receiving the partnership-debts and effects. It appears that A had improperly possessed himself of the books of the firm and refused B access to them. The Court will refuse the injunction.

(e). A manufactures and sells crucibles, designating them as "patent plumbago crucibles", though, in fact, they have never been patented. B pirates the designation. A cannot obtain an injunction to restrain the piracy.

54. Notwithstanding section fifty-three, clause

(f), where a contract comprises an affirmative agreement to do a certain act, coupled with a negative agreement express or implied not to do a certain act, the circumstance that the Court is unable to compel specific performance of the affirmative agreement, shall not preclude it from granting an injunction to perform the negative agreement; provided that the applicant has not failed to perform the contract so far as it is binding on him.

*Illustrations.*

(a). A agrees to sell to B for rupees 1,000 the good-will of a certain business unconnected with business-premises, and further agrees not to carry on that business in Calcutta. B pays A the rupees 1,000, but A carries on the business in Calcutta. The Court cannot compel A to send his customers to B, but B may obtain an injunction restraining A from carrying on the business in Calcutta.

(b). A agrees to sell to B the good-will of a business. A then sets up a similar business close by B's shop, and solicits his old customers to deal with him. This is contrary to his implied agreement, and B may obtain an injunction to restrain A from soliciting the customers, and from doing any act whereby their good-will may be withdrawn from B.

(c). A agrees with B to sing for twelve months at B's theatre and not to sing in public elsewhere. B cannot obtain specific performance of the agreement to sing, but he is entitled to an injunction restraining A from singing at any other place of entertainment.

(d). B agrees with A that he will serve him faithfully for twelve months as a clerk. A is not entitled to a decree for specific performance of this agreement. But he is entitled to an injunction restraining B from serving a rival-house as clerk.

(e). A agrees with B that, in consideration of rupees 1,000 to be paid to him by B on a day fixed, he will not set up a certain business within a specified distance. B fails to pay the money. A cannot be restrained from carrying on the business within the specified distance.

SCHEDULE.

(See section 2.)

Number and year.	Subject.	Extent of repeal.
VIII of 1859	Code of Civil Procedure ...	Secs. 15 and 192.
XIV of 1859	Limitation Act ...	Sec. 15.

## STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill, which is intended as a supplement to the Code of Civil Procedure, as revised and published in March 1875, is to define and amend the law relating to specific and preventive relief.

2. Under the head of specific relief, it deals with suits for—

- (a) the possession of specific property, moveable or immoveable,
- (b) the specific performance of agreements,
- (c) the rectification of instruments,
- (d) the rescission of contracts,
- (e) the cancellation of instruments,
- (f) declaratory decrees, and
- (g) the enforcement of public duties.

3. Under the head of preventive relief, it treats of perpetual injunctions.

4. The chapter relating to the recovery of possession of specific property embodies the English rules as to detinue, and the useful provision of the Indian Act, XIV of 1859, section 15, as to the right of persons informally dispossessed of land to recover possession by a summary suit. Words have been introduced to show expressly that this provision does not apply to lands claimed to belong to Government. This exemption in effect resulted from section 17 of Act XIV of 1859.

5. The matter of the chapter relating to specific performance is distributed under the following heads:—

- (a) Agreements which may be specifically enforced:
- (b) Agreements which cannot be specifically enforced:
- (c) For whom agreements may be specifically enforced:
- (d) Of the discretion of the Court:
- (e) For whom agreements may not be specifically enforced:
- (f) For whom agreements may not be specifically enforced, except with a variation:
- (g) Against whom agreements may be specifically enforced:
- (h) Against whom agreements may not be specifically enforced:
- (i) The effect of dismissing a suit for specific performance.

It attempts to codify the English law on this subject with the following modifications:—

6. Subject to the negative rules afterwards set forth in this chapter, the Bill empowers the Courts to decree specific performance of any agreement when the parties have expressly agreed in writing that specific performance thereof may be required by either of them, or that damages shall not be considered adequate relief. This novel provision, taken from the New York Civil Code, is one of the means by which the Bill proposes to extend a useful jurisdiction, one, it may be remarked, peculiarly adapted to India, where the alternative remedy for a breach of contract, that, namely, of damages, is, owing to the poverty of the bulk of the population and the difficulty of executing money-decrees, often so utterly nugatory.

7. In England it has more than once been ruled that the Court of Chancery will not compel the performance of a continuous duty extending over many years. The Bill renders this doctrine more precise by declaring that an agreement, the performance of which necessarily involves the performance of continuous duties over a longer period than five years from its date, shall not be specifically enforced. Whether this is the best limit of time, will be a point for consideration before the Bill is passed.

8. With regard to specific performance of contracts to execute buildings or to cultivate lands, the Bill is intended to express the present law.

9. The rules as to when a contract for the sale of a married woman's estate will be specifically enforced are in England excessively complicated. The Bill makes no distinction in her case, and thus recognizes the principle embodied in the Indian Succession Act, section 4, and Act III of 1874.

10. In England a voluntary settlement of personal chattels is binding on the settlor and cannot be defeated by a subsequent sale. But it is otherwise in the case of freeholds, copyholds and leaseholds, and specific performance of a subsequent agreement to sell land may be enforced against the voluntary settlor and the parties claiming under the settlement, though not by the settlor. The Bill does not recognize this distinction (which is due to an artificial construction of 27 Eliz., c. 4), and treats land, in this respect, as if it were moveable property.

11. The absence in India of any enactments resembling the Statute of Frauds, sections 1, 3, 4 and 17, renders it unnecessary to embody in the Bill the intricate rules of the Court of Chancery as to when a parol agreement relating to land will, and when it will not, be specifically enforced.



12. It seems impossible to elicit a consistent doctrine from the English decisions as to the rights of a purchaser or lessee to specific performance with abatement or compensation when the title of the person agreeing to sell or lease is defective. The Bill lays down that only in *one* case can such relief be granted, namely, where the part of the agreement which must be left unperformed bears only a small proportion to the whole in value and admits of compensation in money. This will relieve the Courts from the exercise of a duty which, in many cases, must be more a matter of guesswork than of judicial discretion.

13. The right to enforce a contract specifically may, in England, be lost by delay in resorting to the Court, and a large mass of cases exists relating to this doctrine. The Bill contains no rules on the subject, for in India the provision of the Limitation Act (IX of 1871), schedule II, No. 113, that suits for specific performance must be brought within three years from the day on which the plaintiff has notice that performance is refused, renders the doctrine of laches inapplicable to this kind of litigation. See 2 Mad. High Court Rep. 114, 270.

14. It seems to be erroneously supposed by some of the Mofussil Judges that, when a contract is proved, the grant of a decree for its specific performance is a matter of course. Care has been taken in this chapter to show distinctly that the grant of such decrees is purely within the sound discretion of the Court.

15. As in this country all remedies on an agreement can be granted by one and the same Court, it is conceived that only one suit should lie on account of its non-performance. It has on this account been provided in section 28 that if a suit for specific performance is dismissed, no other suit shall be brought on the same agreement.

16. Chapter III, as to the rectification of instruments, chapter IV, as to the rescission of contracts and chapter V, as to the cancellation of instruments, require no special notice. They are taken, with a few verbal changes, from the New York Civil Code, and represent substantially the law on these subjects administered by English Courts of Equity.

17. Chapter VI, as to declaratory decrees, is intended to take the place of Act VIII of 1859, section 15, and differs from the English law on the subject principally in authorising the Court to make declarations of future rights, provided only that such rights are vested. In the absence of such a jurisdiction, it would seem to be necessary to authorise suits to perpetuate testimony, and there are obvious reasons why such suits should not be allowed in India.

18. Chapter VII deals with the subject of *mandamus*, and applies only to the Presidency High Courts. Care has been taken to exempt from orders under this chapter the Secretary of State in Council, the Government of India, and the Local Governments.

19. In Part III are contained some general rules as to when perpetual injunctions will, and when they will not, be granted. The chief modifications of the present law which the Bill proposes to make are as follows:—

20. By the Bill, the Courts are expressly given power to grant injunctions to do substantive acts, when such injunctions are necessary to prevent the breach of an obligation. In England, the same thing is partially effected by the indirect method of making orders, called mandatory injunctions, to refrain from leaving a thing undone.

21. Under the Bill, an injunction to restrain a partner may be obtained without seeking a dissolution of the partnership, even when the partnership is determinable at will. In England the rule on this subject is still unsettled.

22. In England a married executrix will, as a rule, be restrained from getting in the assets if her husband be out of the jurisdiction, or a lunatic. The reason is that the husband, and he alone, is liable for a devastavit committed by his wife. The Indian Succession Act, sections 4 and 275, appears to relieve husbands of this liability, and the Bill accordingly contains no provision on the subject.

23. It is hardly necessary to observe that, in a country where law and equity are administered by the same Courts, the subject of staying legal proceedings need not be dealt with at much length. The provisions of the Bill relating to this matter are contained in section 56, clause (c), illustration (m), and in section 57, clauses (a) and (b), which relate to injunctions necessary to prevent a multiplicity of suits.

24. It may, in conclusion, be remarked that most of the many illustrations contained in the Bill are taken from the English Equity Reports.

SIMLA,  
The 25th October 1875. }

A. HOBHOUSE.

WHITLEY STOKES,  
Secy. to the Govt. of India.

[Second Publication.]

The following Bill was introduced into the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 14th December 1875, and was referred to a Select Committee with instructions to make their report thereon in two months :—

No. 14 of 1875.

## THE PRESIDENCY BANKS BILL, 1876.

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## SCHEDULE.

*A Bill for constituting and regulating the Banks of Bengal, Madras and Bombay.*

WHEREAS the Bank of Bengal is now constituted and regulated by Act No. IV of 1862, as amended by Acts No. VI of 1862 and No. XIX of 1870, and its capital consists of twenty-two millions of rupees, in shares of one thousand rupees each;

And whereas the Bank of Madras is now constituted and regulated by Madras Act No. VI of 1866, as amended by Madras Act No. I of 1871, and its capital consists of five millions six hundred and twenty-five thousand rupees, in shares of one thousand rupees each;

And whereas a Bank named the Bank of Bombay was constituted and regulated by Bombay Act No. X of 1863, as amended by Bombay Acts No. XV of 1866 and No. I of 1867; but such Bank has been wound up and the said Bombay Acts are now obsolete and should be expressly repealed;

And whereas on the tenth day of December 1867, a joint-stock Banking Company was registered and incorporated at Bombay, by virtue of the Indian Companies' Act, 1866, under the name of "The New Bank of Bombay, Limited," with a Memorandum of Association and Articles of Association then also registered, and prescribing the constitution and regulations for the management of such Bank;

And whereas the Government of India now holds two thousand two hundred shares in the said Bank of Bengal, and five hundred and sixty-two and a half shares in the said Bank of Madras; and, under the provisions of the said Acts, No. IV of 1862 and Madras Act No. VI of 1866, is bound to appoint, and has power to remove, certain of the directors of the said Banks of Bengal and Madras respectively, and has also power to give a proxy to any person whom the Governor General in Council may appoint, to attend and vote at any meeting of the proprietors of each of the same Banks;

And whereas the Government of India has determined to sell its said shares and to surrender its said powers; and it is expedient to relieve the said Government from the said duty of appointing directors, and to repeal the said enactments and to consolidate such of them as relate to the said Banks of Bengal and Madras respectively with the changes rendered necessary or desirable by such sale, surrender and relief;

And whereas it is expedient to reduce the said capital of the Bank of Bengal by two millions of rupees (being the nominal value of two thousand of the two thousand two hundred shares in the same Bank so held by the Government of India) and to reduce the said capital of the Bank of Madras by five hundred and sixty-two thousand five hundred rupees (being the nominal value of the shares in the same Bank so held by the Government of India), and to divide the capital so reduced of each of the said Banks into shares of five hundred rupees each;

And whereas it is expedient that the said New Bank of Bombay, Limited, should be reconstituted and regulated, in manner in this Act provided, under the name of the Bank of Bombay;

It is hereby enacted as follows:—

## CHAPTER I.

## PRELIMINARY.

1. This Act may be called "The Presidency Banks Act, 1876;"  
Short title. Banks Act, 1876;  
And it shall come into force on the first day of March 1876.  
Commencement.

2. On and from that day the enactments specified in the schedule hereto annexed shall be repealed to the extent mentioned in the third column of such schedule. But all bye-laws and regulations made under any such enactment, and then in force, shall, so far as they are consistent with this Act, be deemed to have been made hereunder.

The references made in the Indian Companies' Act, 1866, to the Bank of Bengal, the Bank of Madras and the Bank of Bombay, shall be deemed to be made respectively to the Bank of Bengal, the Bank of Madras and the Bank of Bombay as constituted by this Act.

3. In this Act, unless there be something repugnant in the subject or context—

"The Bank" means the Bank of Bengal, the Bank of Madras, or the Bank of Bombay (as the case may be), as constituted and regulated by this Act:

"Capital" means the capital from time to time of the Bank:

"Shares" means the shares from time to time of the capital, and includes also half shares:

"Capital Stock" means that part of the capital into which wholly paid-up shares have been converted or consolidated, and in the case of the Bank of Bengal and the Bank of Madras includes the present consolidated stock of such Banks respectively:

"Registered" means registered in the books of the Bank:

"Shareholders" means the duly registered holders from time to time of the shares of the Bank:

"Proprietors" means the duly registered holders from time to time of the capital stock of the Bank:

"Directors" means the Directors from time to time of the Bank, or, as the case may be, the Directors assembled at a Board:

"Board" means a meeting of the Directors duly called and constituted, or, as the case may be, the Directors assembled at a Board:

"Auditors" and "Secretary and Treasurer" mean those respective officers from time to time of the Bank, and "Secretary and Treasurer" includes a Deputy Secretary:

"General Meeting" means the meeting of proprietors or shareholders or both, held annually under section forty-nine; it includes any adjourned holding thereof:

"Special Meeting" means a meeting of proprietors or shareholders or both, held for the transaction of some particular business specified in the notice convening the meeting; it includes any adjourned holding thereof:

"Special Resolution" means a resolution passed at a special meeting:

"Office" means the office or principal office for the time being of the Bank:

"Goods" includes also bullion, wares and merchandize:

"Presidency of Fort St. George" means the territories now under the government of the Governor of Fort St. George in Council:

"Presidency of Bombay" means the territories now under the government of the Governor of Bombay in Council; and

"Presidency of Fort William" means all the territories in British India other than the Presidency of Fort St. George and the Presidency of Bombay.

## CHAPTER II.

### CONSTITUTION.

4. The several persons who, when this Act comes into force, are respectively the proprietors and shareholders of the said Bank of Bengal, Bank of Madras and New Bank of Bombay, Limited (hereinafter called the present Banks), or who shall, at any time thereafter, by virtue of this or any other Act regulating the Bank, become proprietors or shareholders, shall continue and constitute and be bodies corporate with perpetual succession, under the name,

in the case of the proprietors and shareholders of the said Bank of Bengal—of "The Bank of Bengal,"

in the case of the proprietors and shareholders of the said Bank of Madras—of "The Bank of Madras,"

and in the case of the shareholders and proprietors of the said New Bank of Bombay, Limited—of "The Bank of Bombay,"

and shall respectively possess and enjoy all the rights, powers and immunities incident by law to a corporation aggregate; subject, nevertheless, to the provisions of this or any other Act for the time being in force regulating the Bank.

The several persons who are then proprietors and shareholders of each of the present Banks of Bengal and Madras, or the executors or administrators of such proprietors and shareholders respectively, shall be entitled to be registered as proprietors and holders of a like quantity of stock and a proportionate number of shares, as is or are then registered in their names respectively, or in the names of the persons whom they represent respectively in the books of each of the said present Banks of Bengal and Madras, two shares in the Bank of Bengal as constituted by this Act being deemed equivalent to one share in the present Bank of Bengal, and two shares in the Bank of Madras as constituted by this Act being deemed equivalent to one share in the present Bank of Madras,

and the several persons who are then shareholders of the said New Bank of Bombay, Limited, or the executors or administrators of such shareholders respectively, shall be registered as holders of a like number of shares of the Bank of Bombay as constituted by this Act as are then registered in their names respectively, or in the names of the persons whom they represent respectively, in the books of the said New Bank of Bombay, Limited; and all such shares upon which the sum of five hundred rupees has then been paid, shall be deemed to have been fully paid up.

5. All the property, moveable and immoveable, and all the securities, claims and demands, and the benefits of all agreements, of or to which the present Banks are or shall be respectively possessed or entitled, or which shall, or but

Property of present Banks to vest respectively in new Banks.



for this Act might be, on the said first day of *March* 1876, or might at any time thereafter have been, due to, or claimed or asserted by, the said Banks respectively shall, by virtue of this Act, become vested in and devolve upon, and may be claimed, made and recovered by,

in the case of the said Bank of Bengal,—the Bank of Bengal as constituted by this Act,  
in the case of the said Bank of Madras,—the Bank of Madras as constituted by this Act,  
and in the case of the said New Bank of Bombay, Limited,—the Bank of Bombay as constituted by this Act;

and the Bank shall, from and after the said first day of *March* 1876, be liable and subject to all debts, demands, claims and liabilities which shall then be claimable from, or which, but for this Act, might be then, or might at any time thereafter, have been due or claimable from, or made, claimed, or asserted against, the said Bank of Bengal, Bank of Madras or New Bank of Bombay, Limited, as the case may be, and no suit or legal proceeding then pending by or against the said Bank of Bengal, Bank of Madras or New Bank of Bombay, Limited, shall cease, or abate, or become defective, in consequence of this Act, but may be continued and prosecuted by or against the Bank.

6. The transfer of the assets and liabilities of the said New Bank of Bombay, Limited, to the Bank of Bombay by virtue of this Act, shall operate as a winding up and liquidation of the said New Bank of Bombay, Limited.

No shareholder or creditor of the said New Bank of Bombay, Limited, shall take any proceedings for winding-up the same under the Indian Companies' Act, 1866, or any Act for the time being in force relating to the winding-up of Companies;

and no person shall make, assert or take any claims, demands or proceedings against the same Bank, or the directors or officers thereof, except so far as may be necessary for enforcing the provisions of this or any other Act for the time being in force regulating the Bank of Bombay.

Banks to sue and be sued in corporate name,

and shall use such corporate seal as the directors from time to time appoint;

and may as such body corporate acquire and hold, either absolutely or conditionally, for a term or in perpetuity, any property and may hold and transfer property. whatsoever, moveable or immovable, and transfer, assign and convey the same.

8. The seal of the Bank shall not be affixed to any instrument except in the presence of at least two directors and of the Secretary and Treasurer, who shall sign their names to the instrument in token of their presence, and such signing shall be independent of the signing of any person who may sign the instrument as a witness.

Unless so signed as aforesaid, such instrument shall be of no validity.

### CHAPTER III.

#### BUSINESS.

9. The Bank is authorized to carry on and transact the several kinds of business hereinafter specified (that is to say):

(a) the advancing and lending money, and opening cash-credits, upon the security of—

- (1) promissory notes, debentures, stock and other securities of the Government of India;
- (2) bonds, debentures and annuities charged by the Imperial Parliament on the revenues of India;
- (3) stock or debentures of, or shares in, Railway or other Companies, the interest whereon shall have been guaranteed by the Government of India;
- (4) debentures or other securities for money issued by, or on behalf of, any municipal body under the authority of any Act of an Indian legislature;
- (5) goods which, or the documents of title to which, are deposited with, or assigned to, the Bank as security for such advances, loans or credits; and
- (6) bills of exchange and other negotiable securities, which may be discounted in accordance with the provisions of section ten, paragraph (e).

Provided that such advances and loans may be made, if the directors think fit, to the Governor General in Council, without any specific security;

(b) the selling and realization of the proceeds of sale of any such promissory notes, debentures, stock receipts, bonds, annuities, stock, shares, securities, or goods which, or the documents of title to which, have been deposited with, or assigned to, the Bank as security for such advances, loans or credits, or which are held by the Bank, or over which the Bank is entitled to any lien or charge in respect of any such loan or advance or credit or any debt or claim of the Bank, and which have not been redeemed in due time in accordance with the terms and conditions (if any) of such deposit or assignment;

(c) the drawing, discounting, buying and selling of bills of exchange and other negotiable securities payable in India, or (in the case of the Bank of Madras) in Ceylon;

(d) the investing of the funds of the Bank upon any of the securities specified in paragraph (a) of this section, clauses (1), (2), (3) and (4),

and from time to time altering, converting and transposing such investments for or into others of the investments above specified;

(e) the making, issuing and circulating of bank-post-bills and letters of credit made payable in India, or (in the case of the Bank of Madras) in Ceylon, to order, or otherwise than to the bearer on demand;

(f) the buying and selling of bullion;

(g) the receiving of deposits and keeping cash-accounts on such terms as may be agreed on;

(h) the selling of all property, whether moveable or immovable, which may in any way come

into the possession of the Bank in satisfaction or part satisfaction of debts and claims or otherwise ;

(i) the transacting of pecuniary agency business on commission ;

(j) the acting as agent on commission in the transaction of the following kinds of business (namely) :—

- (1) the buying and the taking charge of any Government or other securities, or shares in any Railway, Bank, Joint Stock, or other public Company ;
- (2) the receiving of the interest or dividends on any securities or shares ;
- (3) the purchase of any securities or shares ;
- (4) the sale or transfer of any securities or shares, or the receipt of any principal money that may be payable thereon ;
- (5) the investment of the principal and interest and dividends so received, or the proceeds of such sale as last aforesaid, upon any securities or shares, or, according to the instructions of its constituents, the holding or paying such principal, interest, dividends or proceeds, or, at the risk of such constituents, to remit the same by public or private bills of exchange, either payable in India or in Great Britain or Ireland, or elsewhere, and the doing of all acts necessary or proper for the purpose of effecting such remittances ;

(k) the drawing of bills of exchange, and the granting of letters of credit, payable out of India, for the use of its constituents for the purpose of the remittances mentioned in the last preceding clause of this section ;

(l) the buying, for the purpose of meeting such bills or letters of credit, of bills of exchange payable out of India, at any usance not exceeding six months.

(m) It shall also be lawful for the Bank under any arrangement or agreement with the Governor General in Council on behalf of the Secretary of State in Council

- (1) to act as banker for, and to pay, receive, collect and remit money, bullion and securities on behalf of, the Government ;
- (2) to undertake and transact any other business which the Government may from time to time entrust to the Bank ;

And the directors shall have power from time to time to arrange and settle with the Governor General in Council the terms of remuneration on which such business shall be undertaken by the Bank, and also as to the examination and audit from time to time of the accounts and affairs of the Bank by or on behalf of the Governor General in Council.

10. The directors shall not transact any kind of banking business other than those above specified, and in particular they shall not make any loan or advance—

- (a) for a longer period than three months ; or
- (b) upon the security of stock or shares of the Bank of which they are directors ; or

(c) upon mortgage, or in any other manner upon the security, of any immoveable property, or the documents of title relating thereto.

(d) Nor shall they lend or advance, by discount of bills or otherwise, to any individual or partnership firm, (except upon the security mentioned in section nine, paragraph (a), numbers (1) to (5) inclusive), any sums of money exceeding at any one time six hundred thousand rupees in the whole.

(e) Nor shall they discount any negotiable security of any individual or partnership firm, payable in the town or at the place where it is presented for discount, which does not carry on it the several responsibilities of at least two persons or firms unconnected with each other in general partnership.

(f) Nor shall they discount any negotiable security having a longer period to run than three months: provided that, in the case of the Bank of Madras, the directors may discount negotiable securities payable in Ceylon having a period to run not exceeding four months.

11. Until the expiration of at least fourteen days after notice has been given by notification of the Governor General in Council published, in the case of the Bank of Bengal, in the *Gazette of India* and the *Calcutta Gazette*, and in the cases of the Bank of Madras and the Bank of Bombay, in the local official Gazette, that the Bank will no longer act as banker for, or pay, receive, collect or remit money, bullion and securities on behalf of the Government,

all sums payable by or to the Secretary of State for India in Council, or by or to the Governor General in Council, or the Government of Bengal or the Governor of Fort St. George in Council or the Governor of Bombay in Council, on behalf of the Secretary of State for India in Council, at the General Treasury of Fort William in Bengal, or at the General Treasury at Madras, or at the General Treasury at Bombay, shall be payable—

in the case of the Secretary of State for India in Council, or the Governor General in Council—at the office of the Bank of Bengal, the Bank of Madras, or the Bank of Bombay, as the case may be, in the case of the Government of Bengal—at the office of the Bank of Bengal ;

in the case of the Governor of Fort St. George in Council—at the office of the Bank of Madras ; and

in the case of the Governor of Bombay in Council—at the office of the Bank of Bombay.

12. Whenever presentment of any promissory note, bond or other security for payment or any other purpose at any of the said General Treasuries would heretofore have been necessary or sufficient, presentment for such purpose shall be necessary or sufficient (as the case may be) until the expiration of fourteen days after the giving of the notice mentioned in section eleven—

in the case of the General Treasury of Fort William—at the office of the Bank of Bengal ;

in the case of the General Treasury at Madras—at the office of the Bank of Madras ; and

in the case of the General Treasury at Bombay—at the office of the Bank of Bombay.



Nothing in this section shall render it necessary to present at the office of the Bank of Bengal, the Bank of Madras, or the Bank of Bombay any security which need not have been presented at one of the said General Treasuries.

13. The office of the Bank of Bengal shall be at Calcutta, that of the Bank of Madras shall be at Madras, and that of the Bank of Bombay shall be in the Island of Bombay;

and the business of the Bank shall be carried on at its office, and, subject to the provisions of section fifteen, at such other place or places in India as the Board may deem advisable.

14. For the purpose of providing offices and places in and at which to carry on and manage the business of the Bank, the directors may—

(a) hire, take, or acquire by purchase, lease or otherwise, lands, houses or buildings, on such terms, as they may from time to time think advisable;

(b) build on any land hired, taken or acquired as aforesaid, or pull down, alter, remove or convert any such houses or buildings, and erect and build other houses and buildings in lieu thereof on any such land;

(c) fit up, furnish, repair and insure against loss by fire all or any of such houses or buildings; and let, or give possession of, the whole or any part of the same, whether fitted up or furnished, or otherwise, to such person, and on such terms as they consider advisable with regard to the interests of the Bank, and the promotion or carrying on of its business;

(d) sell and buy in any such lands, houses or buildings as aforesaid, and resell the same, and otherwise deal with all or any part of the same as they may consider most conducive to the interests of the Bank.

15. It shall be lawful for the directors to maintain as branches or agencies of the Bank, any branches or agencies of the present Banks, which may be in existence on the first day of March 1876,

and, from time to time, to establish branches or agencies at such places within the Presidency in which the Bank is situate as they deem advantageous to the interest of the Bank,

and, with the previous consent of the Governor General in Council, and subject to such restrictions as to the business to be transacted as he thinks fit in each case to impose (such consent and restrictions being notified in the *Gazette of India*), to establish branches or agencies at such places outside the Presidency in which the Bank is situate, as the directors deem advantageous for the interests of the Bank:

Provided that the agency of the Bank of Bengal now established in Bombay shall not advance or lend money, or open cash-credits on securities, or receive deposits and keep cash-accounts, or discount bills of exchange drawn and payable in the Presidency of Bombay,

and shall not act as agent on commission, or transact any business except as agent of the same Bank, or any of its branches or other agencies.

The directors may discontinue any branch or agency maintained or established under this section.

16. The directors may, if authorized to do so by a special resolution, from time to time, purchase the business of any other Bank in British India, of which the capital is divided into shares, upon such terms as may be agreed on in each case, and may pay for any business so purchased either in cash, or in shares, or partly in cash or partly in shares, and, for that purpose, may increase, within the limits prescribed by section seventeen, the capital of the Bank by the issue of such number of shares as may be determined on.

The shareholders or proprietors of the purchased Bank to whom such new shares are allotted shall be shareholders of the Bank, and be in all respects in the same position as if they had respectively subscribed and paid for the shares so allotted to them.

The business so purchased shall, after the purchase, be carried on by the Bank with, and subject to, the several restrictions contained in this Act.

#### CHAPTER IV.

##### CAPITAL.

17. The capital of the Bank of Bengal shall consist of twenty millions of rupees in shares of five hundred rupees each, divisible into half shares, with power to increase the same, in manner hereinafter provided, to thirty millions of rupees.

The capital of the Bank of Madras shall consist of five millions sixty-two thousand five hundred rupees, in shares of five hundred rupees each, divisible into half shares, with power to increase the same, in manner hereinafter provided, to twelve millions of rupees.

The capital of the Bank of Bombay shall consist of ten millions of rupees in shares of five hundred rupees each, divisible into half shares, with power to increase the same, in manner hereinafter provided, to twenty millions of rupees.

18. The capital of the said New Bank of Bombay, Limited, already created, shall, on the first day of March 1876, constitute the capital of the Bank of Bombay, subject to be increased as aforesaid.

19. Any shareholder may from time to time surrender his wholly paid-up shares, or any of them, to the directors, and demand and receive from the Bank, in lieu thereof, capital stock to the like amount as represented by the shares so surrendered, and any proprietor may from time to time surrender his stock, or any portion thereof, to the directors, and demand and receive from the Bank in lieu thereof shares to the like amount, or as near thereto as practicable.

20. The proprietors and shareholders of the Bank may from time to time by special resolution and with the previous sanction of the Governor General in Council increase or reduce the capital of the Bank :

Provided that no such special resolution shall be deemed to have been passed, unless at least one-half in number of the shareholders or proprietors, holding at least one-half of the paid-up capital of the Bank for the time being, be present in person or by proxy, and a majority poll by open voting in favour of the said resolution.

21. When any such special resolution to increase the capital has been passed, the directors may, subject to the provisions of this or any other Act for the time being in force regulating such Bank, and to the special direction (if any) given in reference thereto by the meeting at which such resolution has been passed,

(a) make such orders as they think fit for the opening of subscriptions towards such increase or capital by the proprietors and shareholders ;

(b) allow to the proprietors and shareholders such period to fill up the subscription as to the directors seems fit ;

(c) prescribe the manner in which the proprietors and shareholders shall subscribe and pay into the Bank the proportions of new capital which they may respectively desire to subscribe ; and

(d) make such orders as the directors think fit for the disposal and allotment of the amount of new capital that may not be subscribed for and paid up in manner aforesaid :

Provided that the capital, including any increase therein that may be made under section sixteen, shall not exceed, in the case of the Bank of Bengal, thirty millions of rupees, in the case of the Bank of Madras, twelve millions of rupees, and in the case of the Bank of Bombay, twenty millions of rupees.

22. When any such special resolution to reduce the capital has been passed, the directors may (subject as aforesaid) prescribe the manner in which the reduction shall be carried into effect.

23. Any new capital created under the provisions of section twenty shall be subject to the provisions of this or any other Act regulating the Bank in force for the time being.

#### CHAPTER V.

##### FORFEITURE OF STOCK AND SHARES.

24. If any proprietor or shareholder become indebted to the Bank, the Bank may withhold payment of the dividends on the stock or shares of such proprietor or shareholder registered as his own property, and not as held in trust, or as executor or administrator, until payment of such debt, and apply such dividends in or towards payment thereof ;

and, after demand and default of payment, and notice in that behalf given to such proprietor or

shareholder, or his constituted agent, or by public advertisement in the local official Gazette, the Bank may refuse to register the transfer of any such stock or shares until payment of such debt ;

and, if the same remain unpaid for the space of three months after such notice, the Bank may advertise in the local official Gazette such stock or shares for sale on a day not less than fifteen days from the publication of such advertisement ;

and may, on such day, sell by public auction such stock or shares, or so much or so many thereof as may be necessary, and apply the proceeds thereof in or towards payment of the said debt, with interest, from the day appointed for the payment of such debt to the time of actual payment, at such rate as may have been agreed upon, or, in the absence of such agreement, at the highest rate current for advances by way of local discounts by the Bank ;

and shall pay over the surplus, if any, to such proprietor or shareholder or to his lawful representative.

and the purchasers of all stock or shares sold under this section shall upon payment of the consideration therefor be registered as proprietors or shareholders in respect of such stock or shares, and all such stock and shares shall be subject to the other provisions of this or any other Act regulating the Bank in force for the time being.

#### CHAPTER VI.

##### CERTIFICATES, TRANSFER AND TRANSMISSION OF SHARES AND STOCK.

25. Every shareholder shall be entitled to a certificate, under the corporate seal of the Bank, and signed by two Directors and the Secretary and Treasurer, specifying the shares held by him, and in the case of shares which are not wholly paid up, the amount paid thereon,

and any holder of more than one half share may, at his option, demand a certificate for each such half share, or one or more certificates for all or any of such half shares, and such certificate or certificates shall be delivered to him accordingly : provided that the number of such certificates shall in no case exceed the number of half shares in respect of which they are so delivered.

Every proprietor of capital stock shall be entitled to a receipt signed by two directors and the Secretary and Treasurer, and specifying the amount of stock held by him and any such proprietor may, at his option, demand one receipt for the whole of the stock, or separate receipts for any portions of the stock, so held by him, and such receipt or receipts shall be delivered to him accordingly : Provided that no receipt shall be delivered for a portion of stock less than two hundred and fifty rupees.

For every certificate and receipt delivered under this section there shall be paid such fee as may for the time being be prescribed under section sixty-three : Provided that no fee shall be payable for certificates or receipts delivered to the persons referred to in section four for shares in or stock of the Bank.



Every such certificate and receipt shall be *prima facie* evidence of the title of the shareholder or proprietor to the shares or stock therein specified.

26. The stock and shares of every proprietor and shareholder shall be moveable property, capable of being transferred in manner provided by the regulations contained herein, or in any other Act regulating the Bank for the time being in force, and shall not be of the nature of immoveable property; and each share shall be distinguished by its appropriate number.

27. Every transfer of stock or shares shall be in such form as the Board from time to time may approve, and shall be presented to the Bank accompanied by such evidence as the Board may require to prove the title of the transferor.

Every such transfer shall be verified in manner as the Board require, and the Board may refuse to register any such transfer until the same be so verified, and, in the case of shares not fully paid up, unless the transferee is approved by the Board.

The Board may refuse to register any transfer of stock or shares registered as the property of any proprietor or shareholder and not as held in trust or as executor or administrator, whilst such proprietor or shareholder is either alone, or jointly with any other person, indebted to the Bank on any account.

The transferor shall be deemed to remain the proprietor or holder of the stock or shares transferred until the name of the transferee is registered in respect thereof.

28. The directors may from time to time close the register and transfer-books of the Bank for any period or periods not exceeding in the whole thirty days in any twelve consecutive months.

29. The proprietors and shareholders for the time being, and no other persons, shall be members respectively of the bodies corporate hereby constituted,

and, save as provided by section twenty-four, the Bank shall not be bound or affected by notice of any trust to which any stock or share may be subject in the hands of the proprietor or holder thereof;

and when any stock or share is vested in more than one proprietor or holder, such proprietors or shareholders shall, as between themselves and the Bank, be considered as joint tenants with benefit of survivorship:

Provided that, as regards voting at meetings, service of notices, and receipt of dividend, the person first named in the register may, at the option of the Board, be deemed the sole holder of such stock or share.

30. When, by the death of any proprietor or shareholder, his stock or shares shall devolve on his legal representative; the Bank shall not be bound to recognise any legal representative of such deceased proprietor or shareholder other than a person who has taken out probate to the will, or letters of administration to the estate, of the deceased—

in the case of the Bank of Bengal, from the High Court of Judicature at Fort William;

in the case of the Bank of Madras, from the High Court of Judicature at Madras; and

in the case of the Bank of Bombay, from the High Court of Judicature at Bombay;

in the case of any of the said Banks, a probate granted by any of the said High Courts and taking effect throughout the whole of British India;

or who has obtained a certificate in respect of the estate of the deceased under Act No. XXVII of 1860, or any other Act relating to the collection of debts on successions, describing such stock or shares, from a Court of competent jurisdiction within the Presidency of Fort William, the Presidency of Madras, or the Presidency of Bombay, as the case may be.

31. Any person becoming entitled to stock or shares in consequence of the bankruptcy or insolvency of any proprietor or shareholder, or in consequence of the marriage of any female proprietor or shareholder, may be registered as a proprietor or shareholder upon such evidence being produced as the directors may from time to time require.

## CHAPTER VII.

### DIRECTORS.

32. The business of the Bank shall be managed by the Board, which shall in the first instance consist of six directors, and may subsequently consist of such number, not less than six, and not more than nine, as may be fixed by a special resolution.

Such directors shall be selected by vote of a general or special meeting.

Three of the directors shall form a quorum for the transaction of business.

33. The persons who, on the first day of March 1876, are respectively directors of the Bank of Bengal, the Bank of Madras, and the New Bank of Bombay, Limited, shall be respectively directors of the Bank of Bengal, the Bank of Madras, and the Bank of Bombay, as constituted by this Act, subject to removal as hereinafter provided and to the other provisions herein contained.

34. The two directors who have been longest in office shall go out of office by rotation annually at the general meeting.

Any director so retiring shall be eligible for re-election at such meeting, and, if any question arise as to which of the directors who have been the same time in office shall retire, such question shall be decided by the directors by ballot.

**35. Clause 1.**—No person shall be eligible or qualified to serve as a director of a Bank who is not a proprietor or holder in his own right of unencumbered stock or shares of such Bank, to the amount of ten thousand rupees at the least.

**Clause 2.**—No person shall be eligible or qualified to serve as a director—

If he holds the office of director, provisional director, promoter, agent or manager of any other Bank established, or having a branch or agency, in British India; or advertised as about to be established, or to have a branch or agency, in British India;

If he is a Judge of any High Court; or

If he is a salaried officer of Government not specially authorised by the Governor General in Council to serve as a director;

And the office of director shall be vacated—

If the person holding it accepts or holds any other office of profit under the Bank;

If he becomes bankrupt or insolvent, or compounds with his creditors;

If he is declared lunatic, or becomes of unsound mind;

If he is absent from the Board for more than three consecutive months;

If he ceases to hold in his own right the amount or number of stock or shares required to qualify him for the office.

**Clause 3.**—No two persons who are partners of the same mercantile firm, or one of whom is the general agent of, or holds a power of procuration from, the other or from a mercantile firm of which the other is a partner, shall be eligible or qualified to serve as directors at the same time.

**Clause 4.**—The proprietors or shareholders may, by a special resolution passed by the votes of proprietors or shareholders holding in the aggregate not less than one-half of the capital, remove any director before the expiration of his period of office, and appoint, in his stead, a qualified person, who shall in all respects stand in his place.

**36.** At the first meeting of the directors in every year, they shall choose a president and vice-president from among themselves, and whenever the office of president or vice-president becomes vacant, they shall, at their next meeting, choose a successor for the remainder of the current year.

The president, or in his absence the vice-president, shall be chairman at all meetings whether of directors or of proprietors or shareholders, or of proprietors and shareholders, and shall have an additional or casting vote in all cases of an equal division of votes. Provided that if both the president and vice-president be absent at any meeting the directors present shall elect a chairman for such meeting from among themselves, and such chairman shall, in case of an equal division of votes, have an additional or casting vote.

**37.** The Board shall have power at any time, and from time to time, to supply any vacancies in their number arising from the death, resignation, or disqualification under section thirty-four, of any director, or from his temporary absence from the Board exceeding one month.

Any director so appointed shall, for the purposes of section thirty-four, be considered to have held office from the date on which the director in whose place he is appointed was elected, or (where such director was appointed under this section) from the date on which his mediate or immediate predecessor was elected.

**38.** All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as a director, shall, notwithstanding it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

## CHAPTER VIII.

### OFFICERS OF THE BANK.

**39.** The directors shall have power—

to appoint such officers, clerks and servants as may be necessary to conduct the business of the Bank;

to fix the salaries of such officers, clerks and servants, and

to suspend or remove any officer, clerk or servant of the Bank.

**40.** The Secretary and Treasurer and Secretary of the Bank are hereby severally empowered for and on behalf of the Bank to endorse and transfer promissory notes, stock-receipts, stock, debentures, shares, securities, and documents of title to goods, standing in the name of, or held by, the Bank, and to draw, accept and endorse bills of exchange, bank post-bills, and letters of credit, in the current and authorized business of the Bank, and to sign all other accounts, receipts and documents connected with such business.

**41.** No Secretary and Treasurer, Secretary, Inspector, Agent, Manager, or Accountant, in the service of the Bank, and no Khazanchi or Shroff in the service of the Bank at the principal office,

and, without the previous sanction of the Board, no Khazanchi or Shroff at any branch or agency of the Bank,

shall engage in any other banking or commercial business, either on his own account or as agent for any other person or persons, or shall act as broker for the sale or purchase of Government or other securities.

**42.** Every person appointed to hold, or act in, any one or more of the said offices, and every other officer from whom the directors may from time to



time think fit to require it, shall give security to the directors, for the faithful discharge of his duty to the satisfaction of the directors, in such amount and in such manner as they think proper.

The security to be given as aforesaid by the person holding or acting in the office of Secretary and Treasurer shall not be in a less amount than fifty thousand rupees.

## CHAPTER IX.

### ACCOUNTS AND DIVIDENDS.

43. The directors shall cause the books of the Bank to be balanced on every thirty-first day of December and every thirtieth day of June.

A statement of the balance at every such period, signed by a majority of the directors, shall be forthwith sent to a Secretary to the Government of India, and in the cases of the Bank of Madras and the Bank of Bombay, also to a Secretary to the Local Government.

The Governor General in Council in the case of each of the said Banks, and the Local Government in the case of the Bank of Madras and the Bank of Bombay, shall (so long as any such arrangement with the Government as aforesaid, which has already been, or shall hereafter be, entered into remains in force) at all times be entitled to require of the directors any information touching the affairs of the Bank and the production of any document of the Bank,

and in the case of each of the said Banks the Governor General in Council may require the publication of such statements of its assets and liabilities at such intervals and in such form and manner as the Governor General in Council thinks fit.

Every requisition under this section shall be signified in writing under the hand of a Secretary to the Government of India or to the Local Government (as the case may be), and the directors shall comply with every such requisition.

44. An account of the profits of the Bank during the previous half-year shall be taken on or immediately after every thirty-first day of December and every thirtieth day of June,

and a dividend thereof shall be made as soon thereafter as conveniently may be,

and the amount of such dividend shall be determined by the directors, subject to the provisions of section forty-five;

No unpaid dividend shall bear interest as against the Bank.

45. The directors, before declaring any dividend, may set aside out of the profits of the Bank such a sum as they think proper as a reserve-fund, and invest the same upon any of the securities specified in section nine, paragraph (a), clauses (1), (2), (3) and (4).

46. The directors may from time to time apply such portion as they think fit of the reserve-fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining the buildings and business premises of the

Bank, or any part thereof, or for any other purposes of the Bank, which they from time to time deem expedient.

## CHAPTER X.

### AUDIT.

47. Two auditors shall be elected and their remuneration fixed at the annual general meeting.

The auditors may be proprietors or shareholders; but no person shall be elected auditor who is interested,

otherwise than as a proprietor, shareholder or depositor, in any transaction of the Bank; and no director or other officer of the Company is eligible during his continuance in office.

Auditors re-eligible. Any auditor shall be re-eligible on his quitting office.

The persons who shall be auditors on the first day of March 1876, and all auditors elected under this section, shall severally be and continue to act as auditors until the first general meeting after their respective elections:

Provided that if any casual vacancy occurs in the office of any auditor, the directors shall forthwith call a special meeting for the purpose of supplying the same.

48. Every auditor shall be supplied with a copy of the half-yearly balance-sheet, and it shall be his duty to examine the same, with the accounts and vouchers relating thereto.

Every auditor shall have a list delivered to him of all books kept by the Bank, and shall at all reasonable times have access to the books and accounts of the Bank, and may (at the expense of the Bank) employ accountants or other persons to assist him in investigating such accounts, and may, in relation to such accounts, examine the directors or any other officer of the Bank.

The auditors shall make a report to the proprietors and shareholders upon the annual balance-sheet and accounts; and in every such report they shall state whether, in their opinion, the balance-sheet is a full and fair balance-sheet containing the particulars required by the bye-laws made under this Act and properly drawn up so as to exhibit a true and correct view of the state of the Bank's affairs, and in case they have called for any explanation or information from the directors, whether it has been given by the directors and whether it has been satisfactory.

Such report shall be read together with the report of the directors at the annual general meeting.

## CHAPTER XI.

### MEETINGS.

49. On the first Monday of the month of August in every year, or as soon after such day as is convenient, a general meeting shall be held, at which the directors shall submit to the proprietors and shareholders a statement of the affairs of the Bank made up to the preceding thirtieth day of June.

A notice convening such meeting, signed by the Secretary and Treasurer, shall be published in the local official Gazette, and in the case of the Bank of Bengal also in the *Gazette of India*, at least fifteen days before the meeting is held.

50. Any ten or more proprietors or shareholders holding stock or shares, or both, to the aggregate amount of fifty thousand rupees, or any three directors, may convene a special meeting upon giving fifteen days' previous notice of such meeting, and of the purpose for which the same is convened, as well to the directors as also by public advertisement in the local official Gazette, and in two of the English and one of the Vernacular daily newspapers:

Provided that three months' previous notice shall be thus given of any special meeting held for the purpose of increasing or reducing the capital of the Bank.

51. No business shall be transacted at any meeting, whether general or special, unless a quorum of twenty proprietors or shareholders, or both, in person or by proxy, is present at the commencement of such business.

If within one hour from the time appointed for the meeting a quorum is not present, the meeting, if convened by proprietors or shareholders not being directors, shall be dissolved: in any other case it shall stand adjourned to the same day in the following week at the same time and place, and if at such adjourned meeting a quorum is not present it shall be adjourned *sine die*.

52. At meetings whether general or special, every election and other matter submitted to the meeting shall be decided by a majority of votes, except as in section twenty and in section thirty-five, clause 4, is specially provided,

and no person shall be allowed to vote at any such meeting in respect of any stock or share acquired by transfer, unless such transfer shall have been completed and registered at least three months before the time of such meeting.

And no shareholder shall be entitled to vote at any meeting in respect of any shares held by him alone or jointly, whilst any call due from him alone or jointly remains unpaid.

53. A declaration by the chairman of any meeting, except a special meeting held under section twenty, that a resolution has been carried thereat upon a show of hands, shall be conclusive, and an entry to that effect in the book of proceedings of the Bank shall be sufficient evidence of that fact, without proof of the number or proportion of the votes recorded in favour of, or against, such resolution, unless, immediately on such declaration, a poll be demanded in writing by five proprietors or shareholders present and entitled to vote at such meeting.

54. If a poll be demanded, it shall be taken at such time and place, and (except at the special meeting last aforesaid) either by open voting or by ballot, as the chairman directs,

and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

55. The proceedings at any meeting, and all resolutions and decisions of such meeting, shall be valid and binding on the Bank, so far as such proceedings, resolutions and decisions are consistent with the provisions of this or any other Act for the time being in force and regulating the Bank.

56. At all such meetings, the proprietors or shareholders shall vote according to the following scale:—

The proprietor of capital stock amounting to Rs. 2,000, or the holder of shares of which the total nominal amounts are equal to Rs. 2,000, shall be entitled to ...	1 vote.
The proprietor of capital stock amounting to Rs. 10,000, or the holder of shares of which the total nominal amounts are equal to Rs. 10,000, shall be entitled to ...	2 votes.
The proprietor of capital stock amounting to Rs. 20,000, or the holder of shares of which the total nominal amounts are equal to Rs. 20,000, shall be entitled to ...	3 "
The proprietor of capital stock amounting to Rs. 30,000, or the holder of shares of which the total nominal amounts are equal to Rs. 30,000, shall be entitled to ...	4 "
The proprietor of capital stock amounting to Rs. 40,000, or the holder of shares of which the total nominal amounts are equal to Rs. 40,000, shall be entitled to ...	5 "
The proprietor of capital stock amounting to Rs. 50,000, or the holder of shares of which the total nominal amounts are equal to Rs. 50,000, shall be entitled to ...	6 "
The proprietor of capital stock amounting to Rs. 60,000, or the holder of shares of which the total nominal amounts are equal to Rs. 60,000, shall be entitled to ...	7 "

Where a person is both a proprietor of stock and a holder of shares, his shares shall, for the purpose of this section, be deemed to be stock.

No proprietor or shareholder shall be entitled to more than seven votes at any such meeting.

57. Any proprietor or shareholder entitled to vote at any meeting under this Act may give a proxy in writing, either general or special, under his hand or the hand of his attorney duly authorized, to any other proprietor or shareholder.

Such proxy shall be produced at the time of voting, and shall entitle the person to whom it is given to vote on such matters as shall be authorized by the tenor of such proxy.

But no person shall be permitted to vote in virtue of such proxy unless it has been left for registration at the office of the Bank at least three clear days before the time for holding the meeting at which it is intended to be used:

Provided that a general proxy which has been registered at such office need not be again left for registration previous to any subsequent meeting.

Proxies existing and in force with reference to any of the present Banks, on the first day of March 1876, shall continue in force and be available at meetings under this Act, anything herein contained notwithstanding.



58. If any proprietor or shareholder is a lunatic or idiot, he may vote by his committee or other legal curator, and if any proprietor or shareholder is a minor, he may vote by his guardian, or any one of his guardians, if more than one.

## CHAPTER XII.

## NOTICES.

59. Every notice or other document requiring to be served by the Bank upon any proprietor or shareholder may be served either personally, or by leaving it for, or sending it through the post by registered letter addressed to, him at his registered place of abode;

and every notice sent through the post shall be deemed to have been served at the time at which, in the usual course of post, it would have been delivered.

60. Every notice to be given on the part of any proprietor or shareholder shall be left at the office of the Bank, or sent through the post by registered letter addressed to the Secretary and Treasurer of the Bank at its principal office.

61. Every person who by operation of law, transfers or otherwise becomes entitled to any stock or shares, shall be bound by any and every notice or other document which, previously to his name and address being entered upon the register of the Bank in respect of such stock or shares, has been given to the person from whom he derives his title thereto.

62. When any notice or document is delivered or sent, in accordance with this Act, at or to the registered place of abode of a proprietor or shareholder, then, and notwithstanding he be then deceased, and whether or not the Bank have notice of his decease, such service of the notice or other document shall, for all purposes of this Act, be deemed service thereof on him, or, if dead, on his heirs, executors, administrators, and every of them.

## CHAPTER XIII.

## BYE-LAWS.

63. The directors may from time to time make bye-laws, regulating the following matters or any of them:—

- (a) the distribution of business amongst the directors,
- (b) their remuneration,
- (c) the delegation of any powers of the directors to committees consisting of members of their body,
- (d) the procedure at the meetings of the board or of any committee of the directors,
- (e) the bills which may be discounted and the amount which may be advanced by way of discount,
- (f) the limits for advances and the conditions on which they may be made,
- (g) the circumstances under which alone advances may be made to directors or officers of the Bank, or the relatives of such directors or officers, or to companies, firms or individuals with which or with whom such directors, officers, or relatives are connected as partners, directors, managers, servants, shareholders, or otherwise,

(h) the books and accounts to be kept at the head and other offices respectively,

(i) the reports and statements to be prepared and made by the Chief Accountant, the heads of departments, and the other officers of the Bank,

(j) the particulars to be contained in the half-yearly balance-sheet,

(k) the proportion which the reserve fund must bear to the paid-up capital at the time of declaring or paying any dividend,

(l) the management of the branches and agencies,

(m) the fees payable for certificates of shares or receipts for stock, or for registration of transfers of shares or stock,

(n) the renewal of certificates of shares and receipts for stock, which have been worn-out or lost,

(o) and, generally, for the conduct of the business of the Bank;

and the proprietors and shareholders may, from time to time, at any meeting, whether general or special, make bye-laws regulating the matters mentioned in clauses (a) to (o), both inclusive, of this section, and otherwise for the direction of the affairs of the Bank, and the same shall be binding on the directors and officers, and on the proprietors and shareholders, until rescinded or varied at any subsequent meeting:

Provided that no bye-law, or alteration or rescission of any bye-law, whether made by the directors or by the proprietors and shareholders, shall be of any validity, except in so far as the same is consistent with the provisions of this Act, and has been previously approved by the Governor General in Council, and such approval has been signified in writing under the hand of a Secretary to the Government of India.

## Proviso.

64. The directors may institute, conduct, defend, compromise, refer to arbitration and abandon legal and other proceedings and claims by or against the Bank or the directors or officers of the Bank, and otherwise concerning its affairs.

## CHAPTER XIV.

## MISCELLANEOUS.

64. The directors may institute, conduct, defend, compromise, refer to arbitration and abandon legal and other proceedings and claims by or against the Bank or the directors or officers of the Bank, and otherwise concerning its affairs.

65. In any suit brought against any shareholder to recover any debt due for any call or other monies due from him in his character of shareholder, it shall be sufficient to allege that the defendant is a shareholder of the Bank, and is indebted to the Bank in respect of a call made or other monies due, whereby a right to sue has accrued to the Bank;

and, on the hearing of any suit to be brought by the Bank against any shareholder to recover any debt due for any call, it shall be sufficient to prove that the name of the defendant is on the register of shareholders of the Bank as the holder of the shares in respect of which such debt accrued, and that the call was made, and that notice of such call was duly given to the defendant in pursuance of this or any other Act for the time being in force regulating the Bank;

and it shall not be necessary to prove the appointment of the directors who made such call, nor that a quorum of directors was present at the Board at which such call was made, nor that the

meeting at which it was made was duly convened or constituted.

66. Nothing in the Thirty-third of George the Third, session two, chapter fifty-two, shall be deemed to render it unlawful for any servant of Government, or for any Judge of a High Court, to become a member of any corporation established under this Act.

67. And whereas the Government of India has agreed to sell, and the directors of the present Bank of Bengal have agreed to purchase, at a premium of twenty-two and a half per centum, the said two thousand two hundred shares of one thousand rupees each held by the Government of India in the same Bank; and it is intended that the directors of the Bank of Bengal as constituted by this Act shall cancel two thousand of such shares, and sell for the benefit of the Bank four hundred shares in the same Bank corresponding with the remaining two hundred shares so agreed to be sold and purchased;

And whereas the Government of India has agreed to sell, and the directors of the present Bank of Madras have agreed to purchase, at a premium of ten per centum, the said five hundred and sixty-two and a half shares held by the Government of India in the same Bank: and it is intended that the directors of the Bank of Madras as constituted by this Act shall cancel the same shares;

And whereas the said respective directors of the present Bank of Bengal and Bank of Madras had no power to enter into the said agreements, and the directors of the Bank of Bengal as constituted by this Act have no power to sell the four hundred shares referred to in this section;

And whereas the respective directors of the Bank of Bengal and Bank of Madras as constituted by this Act have no power to cancel the said two thousand shares or the said five hundred and sixty-two and a half shares;

And whereas it is expedient to confirm the said agreements, and to indemnify the said respective directors of the present Bank of Bengal and Bank of Madras for entering into the same, and to empower the directors of the Bank of Bengal as constituted by this Act to sell the said four hundred shares, and to empower the respective directors of the Bank of Bengal and Bank of Madras as constituted by this Act to cancel the said shares so intended to be cancelled; It is hereby further enacted as follows:—

(a).—The said agreements are hereby confirmed, and the said respective directors of the present Bank of Bengal and Bank of Madras are hereby indemnified for entering into the same; and no suit or other proceeding shall be maintained against any such director in respect of any thing *bonâ fide* done in pursuance of either of such agreements.

(b).—The directors of the Bank of Bengal as constituted by this Act shall have power to sell, and shall, as soon as conveniently may be, sell, the said four hundred shares, either together or in parcels, and either by public auction or private contract, and shall apply the proceeds in or towards paying the price of the shares of the Government of India so agreed to be purchased by the directors of the present Bank as aforesaid, or otherwise for the benefit of the Bank of Bengal as constituted by this Act.

(c).—The directors of the Bank of Bengal as constituted by this Act shall have power to cancel, and shall, as soon as conveniently may be, cancel, the said two thousand shares, and the directors of the Bank of Madras as constituted by this Act shall have power to cancel, and shall, as soon as conveniently may be, cancel, the said five hundred and sixty-two and a half shares.

## SCHEDULE.

(SEE SECTION 2.)

### Part I.—Statute.

Number and year.	Abbreviated title.	Extent of repeal.
47 George III, sess. 2, cap. 68.	An Act for the better government of the Settlements of Fort St. George and Bombay, &c.	Sections eight, nine, and ten.

### Part II.—Acts of the Governor General in Council.

Number and year.	Title.	Extent of repeal.
IV of 1862	An Act for regulating the Bank of Bengal.	The whole.
V of 1862	An Act to provide for the payment at the Banks of Bengal, Madras and Bombay, of monies payable at the General Treasuries of Calcutta, Madras and Bombay.	The whole.
VI of 1862	An Act to annex a schedule to Act IV of 1862.	The whole.
XXIX of 1863	An Act to declare the receipts of the Banks of Bengal, Madras and Bombay to be sufficient in lieu of the receipts of the Sub-Treasurers of Fort William, Fort St. George and Bombay, respectively.	The whole.
XIX of 1870	An Act to enable the Directors of the Bank of Bengal to act by a quorum.	The whole.



<i>Part III.—Acts of the Governor of Fort St. George in Council.</i>			<i>Part IV.—Acts of the Governor of Bombay in Council.</i>		
Number and year.	Title.	Extent of repeal.	Number and year.	Title.	Extent of repeal.
VI of 1866	An Act for repealing Madras Act V of 1862, and for regulating the Bank of Madras.	The whole.	X of 1863	An Act for the Re-incorporation and re-constitution of the Bank of Bombay.	The whole.
I of 1871	An Act to amend Madras Act VI of 1866, to give validity to certain acts done by the Directors of the Bank of Madras, and to enable outgoing Directors to be re-elected.	The whole.	XV of 1866	An Act to amend Act No. X of 1863 (Bombay).	The whole.
			I of 1867	An Act to reduce the amount of the capital of the Bank of Bombay and of the shares thereon, and to amend Act X of 1863 and Act XV of 1863 (Bombay).	The whole.

## STATEMENT OF OBJECTS AND REASONS.

The Government of India is a shareholder in the Banks of Bengal and Madras, and it appoints certain of the directors, and may vote by proxy at the meetings of the proprietors.

The Government has, however, determined to sell its shares and to surrender its powers of appointing directors and voting. As those powers are conferred by Acts of Indian legislatures, and as some of the arrangements connected with the sale are beyond the powers of the directors, the present Bill is necessary.

The opportunity has been taken to repeal the present law on the subject, to consolidate the Acts relating to the Banks of Bengal and Madras, and to incorporate the New Bank of Bombay, Limited.

At the same time the Bill proposes to make certain changes, of which the following are the principal:—

(a). The capital of the Bank of Bengal will be reduced from Rs. 22,000,000 to Rs. 20,000,000, and that of the Bank of Madras from Rs. 5,625,000 to Rs. 5,062,500.

(b). The capital of those two Banks, which is now divided into shares of Rs. 1,000 each, will be divided into shares of only Rs. 500 each.

(c). The kinds of business which the Banks may transact are increased in number. They are empowered to lend upon the security of debentures of Indian municipalities, on goods the documents of title to which are assigned to the Banks as security, and on negotiable securities which, under the provisions of the proposed Act, may be discounted. They may also lend to the Governor General in Council without any specific security. On the other hand, they are expressly forbidden to make loans for a longer period than three months; to make unsecured loans to the same person or firm for more than six lakhs of rupees; to discount any negotiable security, payable where it is presented for discount, which does not carry on it the several responsibilities of at least two persons or firms unconnected in general partnership; or to discount negotiable securities having a longer period to run than three months, except in the case of the Bank of Madras, which may discount such securities payable in Ceylon and running for four months.

The Banks, as constituted by the proposed Act, will still be empowered to act as bankers for the Government of India; and though the Government will cease to have any direct pecuniary concern in the Banks, the interests of the public are so largely involved in their careful management, that it has been thought right to provide (a) that the capital of the Banks shall not be increased or diminished without the previous sanction of the Governor General in Council; (b) that the Governor General in Council in the case of each of the three Banks, the Local Government in the case of the Banks of Madras and Bombay, shall be entitled to require information touching the affairs of the Bank and the publication of statements of assets and liabilities; and (c) that the previous approval of the Government of India shall be required to validate bye-laws.

CALCUTTA,  
The 7th December 1875. }

W. MUIR.

WHITLEY STOKES,  
Secy. to the Govt. of India.



# The Gazette of India, EXTRAORDINARY. Published by Authority.

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SIMLA, TUESDAY, JULY 13, 1875.

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## FOREIGN DEPARTMENT.

### NOTIFICATION.

POLITICAL.

No. 2005 P.

*Simla, the 12th July 1875.*

*EXTRACT from the Proceedings of the Government of India in the Foreign Department.*

READ again the following papers:—

- 1.—Instructions to Sir T. D. Forsyth regarding Western Karennee, No. 1318 P., dated 7th May 1875.
- 2.—Report from Colonel H. Browne, Commanding Expedition to Western China, dated 12th March 1875.

Read also—

Letters from Sir T. D. Forsyth, No. 6—75, dated 23rd June 1875, and No. 9—75, dated 1st July 1875.

RESOLUTION.—His Excellency the Viceroy and Governor General in Council having received from Sir Douglas Forsyth despatches reporting the conclusion of the negotiations which he was instructed to conduct with His Majesty the King of Ava, the following summary, with the accompanying documents, is published for general information.

2. In the year 1853 the northern limits of the British province of Pegu were fixed, and in 1856 the boundary was demarcated as far as the country of the Karens, which was then independent. The tract of country called Western Karennee, which adjoins British Burma, from that time to the year 1873 was always considered by the British Government to be independent; and, while the Government of India had no desire to extend the British possessions in that direction, they had received verbal assurances of the most formal kind from the Burmese Minister that the Burmese Government also recognized the independence of Western Karennee.



3. In the course of the year 1873, however, the Burmese Government advanced certain claims to sovereignty over Western Karennee, which claims the Government of India could not admit. His Excellency the Governor General in Council desired to settle this difference in an amicable manner. The same desire was expressed by His Majesty the King of Ava, and His Excellency the Viceroy entertained a confident hope that the Embassy which was despatched by the King to Calcutta early this year would have been able to put an end to the difference between the two Governments.

4. This expectation having been disappointed, the Governor General in Council, being anxious to afford to the Burmese Government another opportunity of an amicable settlement, determined to despatch a special mission to Mandalay with this object, and Sir Douglas Forsyth was entrusted with the office of Envoy.

5. While the discussions regarding Western Karennee were proceeding, the mission which with the assistance of the Burmese Government had been despatched from British Burma to China under Colonel Browne was treacherously attacked and compelled to return; and Mr. Margary, a member of the mission who had gone on in advance, was murdered in the Chinese town of Manwyne. Colonel Browne's official report of the attack was received some time after the Burmese Ambassadors had left Calcutta. As rumours existed that the Burmese Government were implicated in the attack upon Colonel Browne's party, His Excellency in Council carefully investigated every statement bearing on the subject, and in the meanwhile the mission of Sir Douglas Forsyth was postponed. The Governor General in Council thinks it but just to His Majesty the King of Ava to announce that no evidence whatever has either then or subsequently been brought forward to show that the Burmese Government or officials were concerned in the attack, excepting a Burmese anonymous letter which had been sent to some Kachyen Chiefs on the lower route between Burma and China (which was not the route taken by the mission) desiring them to have no friendly intercourse with the foreigners. An official enquiry and explanation regarding this letter were requested from the Burmese Government. The letter has subsequently been reported to have been written by a Burmese priest, who has been punished for his act. The King of Ava had expressed to Captain Strover, the British Political Agent at Mandalay, His Majesty's readiness to aid in the despatch of a fresh mission to China, if the British Government should determine to send one. There was therefore no reason for a further postponement of Sir Douglas Forsyth's mission, or for giving him instructions other than of an entirely friendly character on the subject of the attack upon Colonel Browne's mission, and the arrangements which should be made in the event of a fresh mission being sent to China.

6. It is unnecessary now to allude to the instructions given to Sir Douglas Forsyth on the subject of Western Karennee, as the difference has been otherwise satisfactorily settled.

7. After Sir Douglas Forsyth had left Rangoon on his way to Mandalay, information was received that the Chinese Frontier Officer, Li, who was strongly suspected of having been concerned in the attack on Colonel Browne's mission, had been received with distinction at Mandalay. This information made it necessary to instruct Sir Douglas Forsyth to ask for an explanation of the reception of Li before entering into any friendly communications with the Burmese Government.

8. Sir Douglas Forsyth reached Mandalay on the 10th June, and delivered his credentials to the King on the 16th. On the 18th, he communicated to the Government of India the explanation of the Burmese Government with respect to the reception of Li. The explanation was that Li had not visited Mandalay, or been received with distinction, in his individual capacity, but that he was the bearer of a communication from the Chinese Government regarding the death of the Emperor of China and the succession to the throne, and was accordingly received with the usual honors paid to ambassadors. The letter of Sir Douglas Forsyth to the Burmese Minister, together with his reply, is appended to this Resolution.

9. The Government of India considered that this explanation admitted of the further progress of the negotiations with which Sir Douglas Forsyth was originally entrusted. Sir Douglas Forsyth was accordingly instructed to acquaint the Burmese Government that the explanation had been received, and, after expressing the surprise of the Government of India that no communication had been made to the British Government on the subject of the reception of Li, either before or after it had taken place, to say that His Excellency in Council did not doubt that, after His Majesty the King of Ava had been informed of the reasons for suspecting Li to have been concerned in the attack on the mission, no communications other than those that were absolutely necessary would take place between the Burmese Government and Li pending the result of the enquiry. Sir Douglas Forsyth was instructed to add that, in the event of a fresh mission being sent to China, it would be necessary that a sufficient escort of British troops should accompany it, in order to protect it from insult or attack. Having made this communication in writing, to which he was not directed to request a reply from the Burmese Government, as there was no reason to anticipate any objection on their part, Sir Douglas Forsyth was directed to proceed with his original instructions upon the Western Karennee affair. The letter which Sir Douglas Forsyth addressed to the Burmese Minister in accordance with these instructions is appended to this Resolution.

10. His Majesty the King of Ava, before the reply from the Government of India to the explanation of the reception of Li was received, anticipated Sir Douglas Forsyth's communications on the subject of Western Karennee, and His Majesty's intention to comply with the wishes of the British Government by recognizing the independence of Western Karennee was conveyed to Sir Douglas Forsyth. On the 21st June a formal agreement declaring the independence of Western Karennee was executed on the part of His Majesty and by Sir Douglas Forsyth on the part of the Government of India. This agreement is in the following terms:—

“In accordance with the request of His Excellency the Viceroy of India that Western Karennee should be allowed to remain separate and independent, His Majesty the King of Burma, taking into consideration the great friendship existing between the two great Countries and the desire that that friendship may be lasting and permanent, agrees that no sovereignty or governing authority of any description shall be exercised or claimed in Western Karennee, and His Excellency the Kin-woon Mengyee, Minister for Foreign Affairs on the part of His Majesty the King of Burma, and the Hon'ble Sir Douglas Forsyth, C. B., K. C. S. I., Envoy on the part of His Excellency the Viceroy and Governor General of India, execute the following agreement:—



“**Agreement.**—It is hereby agreed between the British and Burmese Governments that the state of Western Karennee shall remain separate and independent, and that no sovereignty or governing authority of any description shall be claimed or exercised over that State.

“**Whereunto** we have on this day, the 21st day of June 1875, corresponding with the 3rd day of the waning moon of Nayoung 1237 B. E., affixed our seals and signatures.”

Sir Douglas Forsyth intimated formally to the Minister at the time of executing the agreement that, in order to prevent future misunderstanding, the Government of India would proceed to lay down the boundary of Western Karennee, that a communication would be made to His Majesty in due course as to the arrangements for a definition of the boundary, and that His Majesty would be invited to depute an officer, if he should desire to do so, to accompany the officer whom the British Government might hereafter appoint to settle the boundary. A copy of the letter from Sir Douglas Forsyth to the Burmese Minister, placing this communication on record, is appended to this Resolution.

11. By this agreement the independence of Western Karennee has been formally admitted by the Burmese Government; and His Excellency the Governor General in Council cordially recognizes the desire shown by His Majesty the King of Ava to put an end to the difference between the two Governments by meeting the wishes of the British Government in regard to Western Karennee, and that the friendship between Great Britain and Burma should be lasting and permanent. Instructions will be given, as soon as the season of the year admits of travelling in that country, for the definition of a boundary between Western Karennee and the dominions of the King of Ava by a British officer; and the Governor General in Council trusts that the difference with respect to Western Karennee will thus be happily terminated.

12. After Sir Douglas Forsyth had concluded the agreement on the subject of Western Karennee, and had taken leave of the King, an informal, but friendly, communication was made to him from the Minister, indicating disinclination on the part of the Court of Ava to assent to an escort of British troops accompanying a fresh mission to China, but offering a Burmese escort.

13. In consequence of this circumstance it has become necessary to make a fresh communication to the King, and the subject is still under discussion. While no demands will be made upon the Burmese Government other than those which are necessary and just, His Excellency in Council entertains a confident expectation that the Burmese Government will so receive such further communications as may be addressed to them that the friendship between the two Governments, which it is the earnest desire of His Excellency in Council to preserve, may be maintained intact, and that nothing shall occur calculated to give rise to further differences between the two Countries.

**ORDER.**—Ordered, that the foregoing Resolution with the accompanying documents be published in the *Gazette of India* for general information.

By order of His Excellency the Viceroy and

Governor General of India in Council,

C. U. AITCHISON,

Secretary to the Government of India.

## APPENDICES.

## No. 1.

No. 1—75, dated Mandalay, 14th June 1875.

From—SIR T. DOUGLAS FORSYTH, C. B., K. C. S. I., *British Envoy, Mandalay*.

To—HIS EXCELLENCY THE KIN-WOON MENG YEE, MINISTER FOR FOREIGN AFFAIRS, *Burma*.

I AM commanded by His Excellency the Viceroy of India to make the following communication to His Majesty the King of Burma relative to the attack made near Manwyne on the late expedition to Yunan, commanded by Colonel H. Browne, the particulars of which are known to His Majesty and need not therefore be now repeated.

2. His Excellency the Viceroy is entirely at a loss to account for the treacherous attack; but on the demand of Her Majesty's Government, the Chinese Government have consented to the institution of a local investigation, at which a British officer is to be present. The Chinese Government have also issued passports for a new Indian mission through Burma to China, or *vice versa*, if the Government of India see fit to send one.

3. It has been reported by Colonel Browne, and it is a matter of general belief, that Leeseetahi was one of the instigators of the attack on the expedition, and his nephew Shagoon was reported by the Burmese guard who accompanied Colonel Browne to have headed the attack. A final decision must be suspended until the result of the local investigation is known; but as Leeseetahi is well known to be one of the principal Chinese officers in the country where the attack was made, His Excellency expresses his surprise that His Majesty should have received him with honor and distinction, as there must rest upon him a grave suspicion of complicity in the treacherous outrage.

4. This proceeding on the part of His Majesty, unless satisfactorily explained, is inconsistent with the friendship existing between the British and Burmese Governments.

I am therefore commanded by His Excellency the Viceroy, before any other business can be transacted, to ask for any explanation on this subject which His Majesty may desire to offer.

## No. 2.

Dated 14th Lazan of Nayoung 1237 (17th June 1875).

From—HIS EXCELLENCY THE KIN-WOON MENG YEE, MINISTER FOR FOREIGN AFFAIRS, *Burma*.

To—THE HON'BLE SIR T. DOUGLAS FORSYTH, C. B., K. C. S. I., *British Envoy, Mandalay*.

WITH reference to your letter dated 12th Lazan of Nayoung 1237 (14th June 1875), on the subject of Táqui Li-Sí (Leeseetahi), I have the honor to inform you that the Burmese Government are exceedingly pleased with your communication, in which, in accordance with the existing true friendship between the two countries, you so frankly express your views.

When the Táqui Li-Sí came down to Mandalay, he personally was not the object of the grand and ceremonious reception given, but in the same manner as there exists a true and lasting friendship with the Kingdom of Great Britain, so also has existed for generations past a true and lasting friendship with the Empire of China. Accordingly, when once in every ten years an Ambassador with a Royal letter and presents is despatched from one kingdom to another, it is customary to do honor to the occasion by meeting and receiving the Embassy in a proper manner. Also, if within the ten years, in consequence of a change of Government, or



other circumstances, an Ambassador is despatched from one country to another, it is the custom to receive the Embassy with all due ceremony. The British Resident is aware that in the month of Taboung 1235 (February 1874) an Embassy consisting of Yan-Lui-Shivé arrived at Mandalay from the Chinese Empire, and, in conformity with established custom, was received with all State ceremony. In a similar manner, in the month of Kasong 1237 B. E. (May 1875), subsequent to the death of the Chinese Emperor Hton-kyee, a Royal letter, notifying the accession of the younger brother Tsike-tui to the throne, was brought to Mandalay by Táqui Li-Sí (Leeseetahi), and, in accordance with the custom in connection with the reception of Royal letters, &c., from the time of the Royal ancestors, as regards both the Burmese and Chinese dominions, and as in the case of Royal letters, &c., from the English, Italian, and French Rulers, a grand and ceremonious reception was accorded.

### No. 3.

No. 4—75, dated Mandalay, 21st June 1875.

*From*—THE HON'BLE SIR T. DOUGLAS FORSYTH, C. B., K. C. S. I., *British Envoy, Mandalay,*  
*To*—HIS EXCELLENCY THE KIN-WOON MENGYEE, MINISTER FOR FOREIGN AFFAIRS, *Burma.*

HAVING communicated to His Excellency the Viceroy of India the contents of your letter of 17th instant, I am directed to inform you that His Excellency the Viceroy regrets that the circumstance of Leeseetahi being accredited as an Ambassador from the Chinese Government for the purpose of communicating the accession of the Chinese Emperor to the throne should have led to the reception by the King of an officer gravely suspected of being concerned in the attack upon the mission, and His Excellency is surprised that no communication was made to the British Government either before or after the reception of the Embassy.

2. From the reports furnished by the Burmese escort to Colonel Browne at the time of the attack it was well known that Shogoon, nephew of Leeseetahi, headed the attack, and it is notorious that Leeseetahi was one of the chief instigators of the outrage.

3. This outrage having been directed as much against the Burmese as against the British Government, the Viceroy does not doubt that, after this explanation, no communications other than those that are absolutely necessary will take place between the Burmese Government and Leeseetahi pending the result of the enquiry.

4. Until the result of the enquiry be known, His Excellency the Viceroy is unable to say whether he will send a fresh expedition or not. It appears, however, that the King offered to Captain Stroker to send the expedition back again to China if arrangements could be made. The Viceroy desires that his thanks may be communicated to His Majesty for this offer, and, should a mission be sent, it will be necessary that a sufficient escort of British troops accompany it, in order to protect it from insult or attack.

5. His Excellency the Viceroy confidently expects that His Majesty's Government will do everything in their power to ascertain from the Burmese side the causes of the attack, and I shall be glad to be favoured with any information on this subject which they may possess for communication to His Excellency the Viceroy of India.

### No. 4.

No. 7—75, dated Mandalay, 23rd June 1875.

*From*—THE HON'BLE SIR T. DOUGLAS FORSYTH, C. B., K. C. S. I., *British Envoy, Mandalay,*  
*To*—HIS EXCELLENCY THE KIN-WOON MENGYEE, MINISTER FOR FOREIGN AFFAIRS, *Burma.*

WITH reference to the agreement drawn up between the British and Burmese Governments on the 21st instant, I mentioned at the time, and now place on record, that, in order

to prevent future misunderstanding, the Government of India will proceed to lay down the boundary of Western Karennee, which is to be independent.

A communication will be made to His Majesty in due course as to the arrangements for the definition of the boundary, and His Majesty will be invited to depute an officer, if he should desire to do so, to accompany the officer whom the British Government may hereafter appoint to settle the boundary.

C. U. AITCHISON,  
*Secretary to the Government India.*





# The Gazette of India, EXTRAORDINARY.

Published by Authority.

SIMLA, THURSDAY, AUGUST 5, 1875.

GOVERNMENT OF INDIA.

## LEGISLATIVE DEPARTMENT.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 5th August 1875, and is hereby promulgated for general information:—

ACT No. XVI OF 1875.

## THE INDIAN TARIFF ACT, 1875.

### CONTENTS.

#### PREAMBLE.

#### SECTIONS.

1. Short title.
2. Commencement.
3. Local Extent.
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7. Goods partially composed of dutiable articles.
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10. Export of pepper from Cochin.
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12. Duties on goods crossing frontiers of Foreign European Settlements in Presidencies of Madras and Bombay.
13. Excise duty on spirit distilled in British India.
14. Amendment of Consolidated Customs Act, sections 27, 57, 66 and 180.

SCHEDULE A.—IMPORT TARIFF.

SCHEDULE B.—EXPORT TARIFF.

*An Act to amend the law relating to Customs Duties and for other purposes.*

Whereas it is expedient to amend the law relating to the duties of Customs on goods imported and exported by sea, and to restrict the export of

opium, and to provide for the levy of duties on goods crossing the frontier of certain Foreign European Settlements in India and for fixing a maximum duty of excise on spirit manufactured in British India, and to amend the Consolidated Customs Act; It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Indian Tariff Act, 1875."

Commencement.

And it shall come into force on the passing thereof.

This section and

section twelve, clause three, apply to the whole of British India.

Local extent.

The rest of this Act extends to the whole of British India except Aden.

2. Act No. XVIII of 1870 (*to enable the Government of India to exempt goods from Customs duties*), Act No. XIII of 1871 (*to consolidate and amend the law relating to Customs duties*) and all notifications under either of the said Acts are hereby repealed.

Repeal of Acts and Notifications.

3. Nothing herein contained affects Act No. VI of 1873 (*to amend the law relating to the Transshipment*

Saving clause.

of Goods imported by Steamer, and for other purposes), or authorizes the levy of duties of customs on any article carried from one port in British India to another, except salt, salted fish, opium and spirit.

4. There shall be levied and collected, in every

Duties specified in Schedules to be levied.

port to which this Act applies, the duties specified in Schedules A and B hereto annexed.

5. Goods not prohibited to be imported into or

Goods partially composed of dutiable articles.

used in British India, whereof any article liable to duty under this Act forms a part or ingredient, shall be chargeable with the full duty which would be payable on such goods if they were entirely composed of such article, or, if composed of more than one article liable to duty, then with the full duty which would be payable on such goods if they were entirely composed of the article charged with the highest rate of duty.

Power to fix value of dutiable goods and to exempt from customs duties.

6. The Governor General in Council may, from time to time, by notification in the *Gazette of India*,

(a) fix for the purposes of this Act the value of any goods exported or imported by sea on which duties of customs are hereby imposed;

(b) exempt any goods imported or exported into or from British India, or into or from any specified port or place therein, from the whole or any part of the duties of customs to which they are liable under this Act or any other law for the time being in force; and

(c) cancel any such exemption.

7. The Local Government may from time to

Power to make rules for ascertaining that imported spirit has been rendered unfit for human consumption.

time prescribe rules for ascertaining and determining what spirit imported into British India shall be deemed to have been effectually and permanently rendered unfit for human consumption, so as to be subject only to an *ad valorem* duty of ten per cent. under Schedule A hereto annexed, and for causing such spirit to be so rendered, if necessary, by their own officers, before the duty of customs leviable thereon is levied, and at the expense of the person importing it.

Such rules, on being published in the official *Gazette*, shall have the force of law; and whoever wilfully contravenes any such rule shall be liable to fine not exceeding five hundred rupees.

In the absence of any such rules, or if any dispute arises as to their applicability, the executive officer of highest rank in the department of customs in the port shall decide what spirit is subject only to the said *ad valorem* duty, and such decision shall be final.

8. On all pepper exported by sea from the port of Cochin there shall be levied such duty not exceeding nine rupees per khandi as the Governor of Fort Saint George in Council from time to time determines; and at the close of each year, or as soon thereafter as may be convenient, the Collector of Customs at the said port shall, after deducting the expenses of collection, pay the duty collected under this section to the Governments of Travancore and Cochin in such proportion and in such manner as the Governor of Fort Saint George in Council from time to time directs.

Export of opium.

9. No opium shall be exported from any part of British India, unless—

(a) it is covered by a pass granted by an officer appointed in this behalf by the Governor General in Council or the Local Government; or

(b) it is exported under the said Act No. VI of 1873, section seven; or

(c) such export is permitted under the power next hereinafter conferred:

The Governor General in Council may, from time to time, by notification in the *Gazette of India*,

(d) permit the export of opium from any part of British India on payment of such duty, or on

such other terms, as the Governor General in Council thinks fit; and

(e) cancel such permission.

10. Duties of customs shall be levied on goods

Duties on goods crossing frontiers of Foreign European Settlements in Presidencies of Madras and Bombay.

passing by land into or out of Foreign European Settlements situate on the line of coast within the limits of the Presidency of Fort Saint

George or the Presidency of Bombay at the rates prescribed in the Schedules A and B hereto annexed.

11. And whereas it is expedient that the duty of excise on spirit distilled in British India should bear a due proportion to the customs duty on spirit imported into British India, it is hereby further enacted as follows:—

Subject to any general rules or special orders which the Governor General in Council may from time to time make in this behalf, the Local Government may from time to time, by notification in the official *Gazette*, fix the duty of excise leviable on spirit manufactured in all or any of the distilleries situate in the territories under its administration, or in any part of such territories, at any rate not exceeding the rate fixed for imported spirit by Schedule A hereto annexed;

and all provisions now in force as to the levy of duty now chargeable on spirit shall apply to spirit upon which the duty declared under this section has not been paid.

12. And whereas it is expedient to amend the Consolidated Customs Act in manner hereinafter appearing, it is hereby further enacted as follows:—

Section twenty-seven of the Consolidated Customs Act shall be construed, as if, for the words "for which a specific value has not been fixed by the Local Government with the sanction of the Governor General of India in Council," the following words and figures were substituted (namely) "for which a specific value is not fixed by or under the Indian Tariff Act, 1875;"

And the following proviso shall be added to section fifty-seven of the same Act, (namely), "Provided also that where such goods are arms, ammunition, or military stores, they may be sold or otherwise disposed of at such place (whether within or without British India) and in such manner as the Local Government may from time to time direct;"

And section sixty-six of the same Act shall be construed as if for the words and figures "the value of which shall have been fixed under the provisions of section CLXXIX of this Act," the following words and figures were substituted (namely) "for which a specific value has been fixed by or under the Indian Tariff Act, 1875;"

And section one hundred and eighty of the same Act shall be construed as if for the words "last preceding section" the following words and figures were substituted (namely) "Indian Tariff Act, 1875."



## Schedule A.

## IMPORT TARIFF.

No.	NAMES OF ARTICLES.	PER	TARIFF VALUATION.	RATE OF DUTY.
1	APPAREL, INCLUDING HABERDASHERY AND MILLINERY, BUT EXCLUDING BOOTS, SHOES AND HOSIERY ...	...	Rs. A. <i>Ad valorem</i>	5 per cent.
2	ARMS, AMMUNITION AND MILITARY STORES—			
	Fire-arms, and parts thereof ...	lb.	0 5	} 10 per cent.
	Gunpowder, common ...	"	1 0	
	" sporting ...	"	<i>Ad valorem</i>	
	All other sorts ...	...		
8	BRUSHES, ALL SORTS ...	...	"	
4	BUILDING AND ENGINEERING MATERIALS—			
	Asphalt ...	...	"	
	Cements, all sorts ...	...	"	
	Earthen-ware piping ...	...	"	
5	CABINET-WARE AND FURNITURE ...	...	"	
6	CANDLES—			
	Paraffine ...	lb.	0 5	
	Spermaceti ...	"	0 8	
	Wax ...	"	1 0	
	All other sorts, including composition ...	"	0 5	
7	CANES, RATANS, ARTICLES MADE OF CANE OR RATAN, AND BASKET-WORK—			
	Canes, Malacca ...	Doz.	1 0	} 5 per cent.
	Ratans ...	Cwt.	7 0	
	All other sorts, except common bamboos, which are free ...	...	<i>Ad valorem</i>	
8	CARRIAGES AND COMPONENT PARTS THEREOF, EXCEPT RAILWAY CARRIAGES AND TRUCKS	...	"	
9	CHEMICAL PRODUCTS AND PREPARATIONS—			
	Acid, sulphuric ...	lb.	0 2	
	Alkali, country (sajji khār) ...	Cwt.	2 0	
	Alum ...	"	4 0	
	Arsenic ...	"	25 0	
	" China mansil ...	"	16 0	
	Brimstone, flour ...	"	7 0	
	" roll ...	"	6 0	
	" rough ...	"	4 8	
	Copperas, green ...	"	3 0	
	Sal ammoniac ...	"	25 0	
	All other sorts ...	...	<i>Ad valorem</i>	

IMPORT TARIFF—continued.

No.	NAMES OF ARTICLES.	PER	TARIFF VALUATION.	RATE OF DUTY.
			Rs. A.	
10	CHINESE AND JAPANESE-WARE, INCLUDING LACQUERED-WARE, BUT EXCLUDING EARTHEN-WARE, CHINA AND PORCELAIN ...	...	<i>Ad valorem</i>	
11	CLOCKS, WATCHES AND OTHER TIME-KEEPERS	...	"	
12	COIR AND ARTICLES MADE OF COIR—			
	Matting ...	Cwt.	9 0	
	Yarn of all kinds ...	...		
	Other articles made of coir, except cables and rope ...	...	<i>Ad valorem</i>	
13	CORAL, REAL ...	...	"	
14	CORDAGE AND ROPE MADE OF ANY VEGETABLE FIBRE EXCEPT COTTON AND JUTE—			
	Coir cables, tarred ...	Cwt.	10 0	
	Coir rope ...	"	10 0	
	Cordage, hemp, European ...	"	20 0	
	" Manilla ...	"	25 0	
	Twine, European, Sail ...	lb.	0 8	
	All other sorts ...	...	<i>Ad valorem</i>	
15	CORK AND ARTICLES MADE OF CORK—			
	Bottle-corks ...	Gross	1 8	
	Vial-corks ...	"	0 8	
	All other sorts ...	...	<i>Ad valorem</i>	
				5 per cent.
16	COTTON AND ARTICLES MADE OF COTTON—			
	Cotton hosiery ...	...	"	
	Cotton, Raw, not the produce of Continental Asia or Ceylon ...	Cwt.	25 0	
	Cotton rope ...	"	50 0	
	Country canvas ...	"		
	Piece Goods—			
	Grey—			
	Jaconets, exceeding 10 × 10 to the quarter-inch ...	lb.	0 12	
	Jaconets, other sorts ...	"	0 10½	
	Mulls ...	"	1 1	
	Printers ...	"	0 10½	
	Shirtings and longcloths ...	"	0 9	
	T cloths 18 reed and upwards, and madapollams ...	"	0 9½	
	T cloths under 18 reed, jeans, domestics, sheetings and drills ...	"	0 8	
	Other sorts ...	...	<i>Ad valorem</i>	
	Sewing thread—			
	Goa and Country ...	Cwt.	30 0	
	On reels or cards containing 100 yards each, and <i>pro rata</i> above and below*	Gross	3 0	
	White and coloured ...	lb.	1 0	

\* Duty to be charged either on the mark or on the actual length.



## IMPORT TARIFF—continued.

No.	NAMES OF ARTICLES.	PER	TARIFF VALUATION.	RATE OF DUTY.
	COTTON AND ARTICLES MADE OF COTTON, — <i>contd.</i>		Rs. A.	
	Twist—			
	Mule—No. 15 and lower Nos. ...	lb.	0 5	
	Nos. 16 to 24 ...	"	0 7	
	" 25 to 32 ...	"	0 8	
	" 33 to 42 ...	"	0 9½	
	" 43 to 52 ...	"	0 11	
	" 53 to 60 ...	"	0 12½	
	" 61 to 70 ...	"	0 14	
	" 71 to 80 ...	"	0 15	
	And so on, one anna to be added to the valuation per lb. for every count often, or part of a count of ten, above 80.			3½ per cent
	Water—No. 20 and lower Nos. ...	"	0 8	
	Nos. 21 to 30 ...	"	0 9½	
	" 31 to 40 ...	"	0 11½	
	" 41 to 50 ...	"	0 13	
	Above 50 ...	"	1 0	
	Twist, Orange, Red, and other colours except Turkey Red* ...	"	0 13	
	Twist, Turkey Red, all kinds* ...	"	1 6	
	Cotton goods, all other sorts ...	...	<i>Ad valorem</i>	
17	DRUGS AND MEDICINES, EXCEPT OPIUM—			
	Aloes, black ...	Cwt.	11 0	
	" Socotra ...	"	25 0	
	Assafoetida (hing) ...	"	55 0	
	" coarse (híngrá) ...	"	10 0	
	Camphor, Bhemsaini (baras) ...	lb.	80 0	
	" refined, cake ...	Cwt.	65 0	
	" crude, in powder ...	"	40 0	
	Cassia lignea ...	"	38 0	
	Salep ...	"	80 0	
	Senna leaves ...	"	5 0	
	All other sorts, except quinine which is free ...	...	<i>Ad valorem</i>	
18	DYEING AND COLOURING MATERIALS—			
	Aniline dyes—Magenta and Roseine ...	oz.	0 4	
	Cochineal ...	lb.	1 4	5 per cent.
	Gallnuts, country, Myrabolam ...	Cwt.	4 0	
	" Persian* ...	"	25 0	
	Madder or manjith ...	"	12 0	
	Orchilla weed ...	"	5 0	
	Sapan wood and root ...	"	5 0	
	All other sorts ...	...	<i>Ad valorem</i>	
19	EARTHEN-WARE (EXCEPT EARTHEN-WARE PIPING), CHINA, CHINA CLAY AND PORCELAIN ...	...	"	
20	FIREWORKS—			
	China ...	Box of 133½ lbs.	80 0	
	All other sorts ...	...	<i>Ad valorem</i>	
21	FLAX AND ARTICLES MADE OF FLAX—			
	Canvas, European sail, not exceeding 40 yards ...	Bolt	15 0	
	Piece goods ...	...	<i>Ad valorem</i>	
	All other sorts, including linen thread ...	...	"	

\* Duty to be charged on the grey weight of the coloured yarn: when this is not ascertainable, the actual wharf weight, or invoice weight, to be taken.

## IMPORT TARIFF—continued.

No.	NAMES OF ARTICLES.	PER	TARIFF VALUATION.	RATE OF DUTY.
			Rs. A.	
22	FRUITS AND VEGETABLES—			
	Almonds without shell ...	Cwt.	30 0	
	"    in the shell ...	"	11 0	
	Cajoo kernels ...	"	10 0	
	Cocoanuts ...	Thousand	30 0	
	"    kernel (khopra) ...	Cwt.	8 8	
	"    kernel (khopra) ...	"	35 0	
	Currants, European ...	"	12 0	
	"    Persian ...	"	4 8	
	Dates, dry, in bags ...	"	3 8	
	"    wet, in bags ...	"	7 0	
	"    in pots ...	"	42 0	
	Figs, European ...	"	6 8	
	"    Persian, dried ...	"	5 0	
	Garlic ...	"	20 0	
	Pistachio nuts ...	"	16 0	
	Prunes, Bussorah ...	"	"	
	Raisins, black, Persian Gulf, Red Sea, and Kishmish ...	"	16 0	
	"    Munakka, Persian Gulf, and Red Sea ...	"	7 0	
	"    Malaga and bloom ...	lb	0 10	
	"    other sorts ...	"	<i>Ad valorem</i>	
	Walnuts ...	Cwt.	5 8	
	All other sorts, except Bed-mushk, Bajarbattu nuts, and fresh fruits and vegetables not separately enu- merated, which are free ...	"	<i>Ad valorem</i>	
23	GLASS, GLASS-WARE, BEADS, FALSE PEARLS AND FALSE CORALS—			
	Bangles, Glass, China, gilt ...	100 pairs	6 0	
	"    "    "    not gilt ...	"	3 0	
	Beads, China ...	Cwt.	30 0	5 per cent.
	Coral, false ...	"	<i>Ad valorem</i>	
	Glass, China, of all colours ...	133½ lbs.	32 0	
	"    Crown, colored ...	100 Supl. feet	25 0	
	"    of sizes ...	"	7 0	
	Pearls, false—			
	Bájria ...	Lakh	5 0	
	Boria ...	Thousand	1 4	
	Jouria ...	Lakh	8 0	
	Nathia ...	Thousand	0 6	
	Tachea ...	"	1 0	
	Wattanah ...	Lakh	10 0	
	All other sorts of beads, false pearls and glass, except bottles used to bottle beer, wine, spirit, or aerated waters, which are free ...	"	<i>Ad valorem</i>	
24	GUMS, GUM RESINS, AND ARTICLES MADE OF GUM OR GUM RESIN—			
	Copal ...	Cwt.	65 0	
	Cutch and Gambier ...	"	10 0	
	Gum Ammoniac ...	"	12 0	
	"    Arabic ...	"	15 0	
	"    Bdellium, (common gum) ...	"	5 0	
	"    Benjamin ...	"	40 0	
	"    Bysabol (coarse myrrh) ...	"	12 0	
	"    Olibanum or frankincense ...	"	12 0	
	Kino ...	"	10 0	
	Myrrh ...	"	30 0	
	"    Persian (false) ...	"	3 0	
	Rosin ...	"	5 0	
	All other sorts ...	"	<i>Ad valorem</i>	





## IMPORT TARIFF—continued.

No.	NAMES OF ARTICLES.	PER	TARIFF VALUATION.	RATE OF DUTY.
30	JEWELLERY, INCLUDING PLATE—		Rs. A.	
	Silver-ware, Plain	Tolah	1 2	5 per cent.
	„ Embossed or chased. } Other than European }	„	1 8	
	All other sorts, except precious stones and pearls, which are free ...	...	Ad valorem	
31	LEATHER, AND ARTICLES MADE OF LEATHER, INCLUDING BOOTS, SHOES, HARNESS AND SADDLERY, BUT EXCLUDING BELTING FOR DRIVING MACHINERY, WHICH IS FREE ...	...	„	
32	LIQUORS—			
	Ale, beer and porter ...	Impl. Gallon or six quart bottles ...	...	One anna.
	Cider, and other fermented liquors		...	Rs. 4.
	Liqueurs ...	„	...	
	Spirit, for use exclusively in arts or manufactures or in chemistry, which has been rendered effectually and permanently unfit for human consumption ...	...	Ad valorem	10 per cent.
	Spirit, other sorts ...	Impl. Gallon or six quart bottles of the strength of London proof ...	...	Rs. 4, and the duty to be increased in proportion as the strength of the spirit exceeds London proof. *
	Wines—			
	Champagne and all other sparkling wines ...	Impl. Gallon or six quart bottles ...	...	Rs. 2-8.
	Claret, and Still Burgundy ...	„	...	Re. 1.
	All other sorts of still wines ...	„	...	Re. 1-8.
33	MATCHES, LUCIFER, AND ALL OTHER SORTS	...	Ad valorem	
34	MATS—			
	Floor-matting, China and Singapore, of all sorts ...	Hundred	70 0	
	All other sorts except coir matting ...	...	Ad valorem	
35	METALS, UNWROUGHT, WROUGHT, AND ARTICLES MADE OF METALS—			
	Brass—			
	Beads, Ghungri, China ...	Thousand	0 14	5 per cent.
	Old ...	Cwt.	35 0	
	Sheets, rolls, very thin ...	Ib.	90 0	
	Wire ...	...	0 8	
	All other sorts ...	...	Ad valorem	
	Copper—			
	Australian cake ...	Cwt.	50 0	5 per cent.
	Bolt ...	„	50 0	
	Brazier's ...	„	52 0	
	China cash ...	„	30 0	
	Japan ...	„	48 0	
	Nails and composition nails ...	„	48 0	
	Old ...	„	48 0	
	Pigs and slabs, foreign ...	„	46 0	
	Sheet, sheathing, and plate ...	„	52 0	
	Tiles, ingots, cakes, and bricks ...	„	48 0	
	Other sorts, unmanufactured ...	...	Ad valorem	
	China white copper-ware ...	Ib.	1 2	
	Foil or dakpana ...	100 leaves	3 0	
	Wire ...	Ib.	0 10	
	All other sorts ...	...	Ad valorem	
	Gold Leaf, European ...	100 leaves	3 0	
	„ Mock ...	20 books	5 0	



## IMPORT TARIFF—continued.

No.	NAMES OF ARTICLES.	PER	TARIFF VALUATION.	RATE OF DUTY.
	METALS, &c.— <i>contd.</i>		Rs. A.	
	Iron—			
	Anchors and cables ...	...	<i>Ad valorem</i>	1 per cent.
	Angle and T iron ...	...	"	
	Beams, pillars, girders, bridge-work, and other descriptions of iron, imported exclusively for building purposes ...	...	"	
	Flat, square and bolt, including Scotch ...	Ton	100 0	
	Galvanised ...	Cwt.	11 0	
	Sheets and ridging ...	"	"	
	Hoop, plate and sheet ...	Ton	135 0	
	Nails, rose, clasp, and flat-headed, rivets and washers ...	Cwt.	12 8	
	Nails other sorts, including galvanised ...	...	<i>Ad valorem</i>	
	Nail rod ...	Ton	120 0	
	Old ...	Cwt.	2 0	5 per cent.
	Pig ...	Ton	55 0	
	Pipes and tubes ...	...	<i>Ad valorem</i>	
	Rice bowls ...	Set of ten	4 0	
	" ...	" six	2 0	
	Rod, round, British, not exceeding half-inch diameter ...	Ton	130 0	
	" exceeding half-inch diameter ...	"	100 0	
	Swedish, flat and square ...	"	160 0	
	Tinned plates ...	Cwt.	15 0	
	All other sorts, including wire, but excluding railway materials, and kentledge, which last-named article is free ...	...	<i>Ad valorem</i>	
	Lametta, double reels ...	Score	4 8	
	" single " ...	"	2 4	
	Lead—			
	Ore, Galena ...	Cwt.	13 0	
	Pig ...	"	11 0	
	Pipes ...	...	<i>Ad valorem</i>	
	Sheets, tea ...	Cwt.	20 0	
	" other sorts ...	"	12 0	
	Orsidue and brass leaves, foreign, European ...	lb.	1 2	
	" " " China ...	"	0 14	
	Patent or Yellow Metals, sheathing, sheets, and bolts ...	Cwt.	42 0	5 per cent.
	Ditto ditto old ...	"	37 0	
	Quicksilver ...	lb.	2 8	
	Shot, bird ...	Cwt.	16 0	
	Steel excluding railway materials—			
	Blistered ...	"	9 0	
	British and foreign other than Swedish ...	"	9 0	
	Cast ...	"	25 0	
	Spring ...	"	10 0	
	Swedish ...	"	10 0	
	Tin, Block ...	"	50 0	
	" other sorts ...	...	<i>Ad valorem</i>	
	Zinc or Spelter—			
	Nails ...	Cwt.	14 0	
	Plate and other shapes, soft ...	"	15 0	
	" " " hard ...	"	11 0	
	Sheet or zinc sheathing ...	"	17 0	
	All other sorts ...	...	<i>Ad valorem</i>	
36	MILITARY AND OTHER UNIFORMS AND ACCOUTREMENTS &c., EXCEPT UNIFORMS AND ACCOUTREMENTS IMPORTED BY A PUBLIC SERVANT FOR HIS PERSONAL USE, WHICH ARE FREE ...	...	"	

## IMPORT TARIFF—continued.

No.	NAMES OF ARTICLES.	PER	TARIFF VALUATION.	RATE OF DUTY.
			Rs. A.	
37	NAVAL STORES NOT OTHERWISE DESCRIBED, EXCEPT OAKUM, WHICH IS FREE ...	...	<i>Ad valorem</i>	
38	OILS—			
	Cassia ...	lb.	3 0	
	Cocoanut ...	Cwt.	15 0	
	Grass ...	lb.	1 12	
	Jinjili or til ...	Cwt.	15 0	
	Kerosine, paraffine, petroleum, rock and shale oils of all descriptions	Impl. Gallon	0 12	
	Linseed, European ...	"	2 0	5 per cent.
	Naphtha ...	Cwt.	30 0	
	Otto of sorts ...	oz.	10 0	
	Sandalwood ...	lb.	8 0	
	Turpentine ...	Impl. Gallon	1 10	
	Whale (except spermaceti) and fish ...	Cwt.	15 0	
	Wood ...	"	15 0	
	All other sorts, except cocum and slush fat, which are free ...	...	<i>Ad valorem</i>	
39	OIL AND FLOOR CLOTH ...	...	"	
40	OPIMUM NOT COVERED BY A GOVERNMENT PASS	Seer of 80 tolahs	...	Rs. 24.
41	PAINTS, COLOURS, PAINTERS' MATERIALS, AND COMPOSITIONS FOR APPLICATION TO LEATHER AND METALS—			
	Ochre other than European, all colours	Cwt.	1 8	
	Paints of sorts ...	"	12 0	
	" Composition ...	"	25 0	
	" Patent driers ...	"	14 0	
	Prussian blue, China ...	lb.	0 8	
	" " European ...	"	1 8	
	Red lead ...	Cwt.*	14 0	
	Turpentine ...	Impl. Gallon	1 10	
	Verdigris ...	Cwt.	75 0	5 per cent.
	Vermilion, Canton ...	Box of 90 bundles	150 0	
	White lead ...	Cwt.	12 0	
	All other sorts ...	...	<i>Ad valorem</i>	
42	PAPER—			
	Wall paper ...	...	"	
43	PERFUMERY—			
	Atary, Persian ...	Cwt.	15 0	
	Perfumed spirit in wood, or in bottles containing more than half a pint...	Impl. Gallon	...	Rs. 4.
	Rose-flowers, dried ...	Cwt.	13 0	
	Rose-water ...	Impl. Gallon	1 12	
	All other sorts, including perfumed spirit in bottles containing not more than half a pint ...	...	<i>Ad valorem</i>	
44	PIECE GOODS, NOT OTHERWISE DESCRIBED	...	"	
45	PIPES AND OTHER IMPLEMENTS USED IN THE CONSUMPTION OF TOBACCO ...	...	"	5 per cent.
46	PITCH, TAR, AND DAMMER—			
	Bitumen ...	...	5 0	
	Dammer ...	Cwt.	6 0	
	Pitch, American and European ...	"	2 8	
	" Coal ...	"	6 0	
	Tar, American and European ...	"	2 8	
	" Coal ...	"	...	
	" Mineral ...	...	<i>Ad valorem</i>	



## IMPORT TARIFF—continued.

No.	NAMES OF ARTICLES.	PER	TARIFF VALUATION.	RATE OF DUTY.
47	PROVISIONS AND OILMAN'S STORES—		Rs. A.	
	Bacon in canisters, jowls and cheeks	lb.	0 9	5 per cent.
	Beef and pork ...	{ Tierce of three cwt.	60 0	
	Cheese ...	{ Barrel of two "	40 0	
	China preserves ...	lb.	0 10	
	Flour ...	Box of six jars	8 0	
	Ghee ...	Barrel or sack of 200 lbs.	15 0	12 annas.*
	Groceries not otherwise described ...	Cwt.	36 0	
	Pork hams ...	...	<i>Ad valorem</i>	
	Salted fish*	lb.	0 10	
	Tongues, salted ...	Cwt.	...	
	Vinegar, European, in wood ...	Keg of six	10 0	5 per cent.
	" Persian ...	Impl. Gallon	1 8	
	" Country ...	"	0 12	
	All other sorts, except bêche-de-mer, fishmaws, shark-fins, singally and sozille, which are free ...	"	0 6	
		...	<i>Ad valorem</i>	
48	RAILWAY MATERIALS—			
	Of iron ...	...	"	1 per cent.
	Steel rails and other articles made of steel intended for the permanent-way of railways ...	...	"	
	All other sorts, including carriages and trucks ...	...	"	5 per cent.
49	SALT—			
	Imported into British Burma ...	Indian maund of 3,200 tolahs.	...	3 annas.
	" into Bengal ...	"	...	Rs. 3-4.
	" into any other part of British India ...	"	...	" 1-13.
50	SEEDS—			
	Castor ...	Cwt.	4 8	5 per cent.
	Cummin ...	"	13 0	
	" black ...	"	4 8	
	Linseed ...	"	5 8	
	Methi ...	"	4 0	
	Mustard, rape, or sarson ...	"	4 8	
	Quince seed or bihi-dana ...	"	30 0	
	Sozirá ...	"	20 0	
	All other sorts, except seeds imported by any Public Society for gratuitous distribution, which are free ...	...	<i>Ad valorem</i>	
51	SHELLS AND COWRIES—			
	Chanks—			
	Large shells, for cameos ...	Hundred	10 0	5 per cent.
	White, live ...	"	6 0	
	" dead ...	"	3 0	
	Cowras—			
	From Mozambique and Zanzibar ...	"	3 0	5 per cent.
	From other places ...	"	0 8	

\* Duty to be levied only on salted fish imported into the Bombay Presidency except Sind, and into such other parts of British India as the Governor General in Council may, by notification in the *Gazette of India*, from time to time, direct.

## IMPORT TARIFF—continued.

No.	NAMES OF ARTICLES.	PER	TARIFF VALUATION.	RATE OF DUTY.
			Rs. A.	
	SHELLS AND COWRIES— <i>contd.</i>			
	Cowries—			
	Bazar, common ... ..	Cwt.	2 8	
	Maldiva ... ..	"	10 0	
	Sankhli ... ..	"	50 0	
	Yellow, superior quality ... ..	"	5 0	
	Mother-of-pearl ... ..	"	30 0	
	Tortoise-shell ... ..	lb.	6 0	
	" nakh ... ..	"	1 0	
	All other sorts, including nakhla ... ..	...	<i>Ad valorem</i>	
52	SILK AND ARTICLES MADE OF SILK—			
	Floss ... ..	lb.	8 0	
	Piece goods ... ..	...	<i>Ad valorem</i>	
	Raw Silk—			
	Chaháram and Cochin China ... ..	lb.	4 0	
	Mathow ... ..	"	1 12	
	Other kinds of China ... ..	"	7 0	
	Panjam and Kachra ... ..	"	1 4	
	Persian ... ..	"	5 0	
	Siam ... ..	"	2 8	
	Sewing thread, China ... ..	"	8 0	
	All other sorts ... ..	...	<i>Ad valorem</i>	
53	SOAP ... ..	...	"	
54	SPICES—			
	Aniseed star ... ..	Cwt.	35 0	
	Betelnuts—			
	Goa ... ..	"	12 0	5 per cent.
	In the husk ... ..	Thousand	2 0	
	White, Srivarddhan ... ..	Cwt.	18 0	
	All other sorts ... ..	"	5 0	
	Chillies, dried ... ..	"	8 0	
	Cloves ... ..	"	40 0	
	" in seeds, Narlavang ... ..	"	16 0	
	Mace ... ..	lb.	1 2	
	Nutmegs ... ..	"	1 0	
	" in shell ... ..	"	0 8	
	Pepper, black and long ... ..	Cwt.	25 0	
	" white ... ..	"	32 0	
	All other sorts ... ..	...	<i>Ad valorem</i>	
55	STATIONERY (EXCEPT PAPER, WHICH IS FREE) ... ..	...	"	
56	SUGAR—			
	China, candy ... ..	Cwt.	20 0	
	Loaf ... ..	"	23 0	
	Soft ... ..	"	13 8	
	All other sorts of saccharine produce ... ..	...	<i>Ad valorem</i>	
57	TEA—			
	Black ... ..	lb.	0 12	
	Green ... ..	"	1 4	
58	TOBACCO—			
	Manufactured ... ..	...	<i>Ad valorem</i>	
	Unmanufactured ... ..	...	"	



## IMPORT TARIFF—concluded.

No.	NAMES OF ARTICLES.	PER	TARIFF VALUATION.	RATE OF DUTY.
59	TOILET REQUISITES, NOT OTHERWISE DESCRIBED ...	...	Rs. A. <i>Ad valorem</i>	5 per cent.
60	TOYS AND REQUISITES FOR ALL GAMES ...	...	"	
61	UMBRELLAS—			
	China paper kettisals ...	Box of 110	30 0	
	Cotton, steel-ribbed ...	Each	0 13	
	" cane-ribbed ...	"	0 12	
	" oiled, other than European...	"	0 10	
	All other sorts ...	...	<i>Ad valorem</i>	
62	WOOLLEN GOODS—			
	Braid ...	...	"	
	Hosiery ...	...	"	
	Piece goods ...	...	"	
	All other sorts ...	...	"	

## Schedule B.

## EXPORT TARIFF.

No.	NAMES OF ARTICLES.	PER	TARIFF VALUATION.	RATE OF DUTY.
1	DYEING AND COLOURING MATERIALS—		Rs. A.	} Rs. 3.
	Indigo—			
	Leaves, green or dry ...	Ton	...	
	Manufactured ...	Indian maund of 3,200 tolahs.	...	} 3 annas.
2	GRAIN AND PULSE—			
	Rice in the husk (paddy) ...	"	...	
	" not in the husk ...	"	...	} 4 per cent.
3	LAC—			
	Button ...	Cwt.	65 0	
	Seed ...	"	45 0	
	Shell ...	"	80 0	
	Stick ...	"	35 0	
	All other sorts, except lac-dye, which is free ...	...	<i>Ad valorem</i>	

WHITLEY STOKES,  
Secy. to the Govt. of India.

## FINANCIAL DEPARTMENT.

## NOTIFICATION.

## SEPARATE REVENUE.

## Customs.

No. 2346.

SIMLA, THE 5TH AUGUST 1875.

IN exercise of the powers conferred by Section 6, Clause (b) of the Indian Tariff Act, 1875, the Governor General in Council is pleased to direct as follows:—

- (1).—No import duty shall be levied on salted fish imported from any port in any part of British India except British Burma and Sindh, and protected by the certificate of an officer empowered in that behalf by the Local Government, that duty has been paid upon the salt used in curing such fish.
- (2).—The duty chargeable on fish thus protected, and imported from any port in Sindh shall be nine annas a hundredweight.
- (3).—Salt, opium and spirit imported from any port in British India and protected by the certificate of an officer empowered in that behalf by the Governor General in Council or the Local Government, shall be chargeable with only the amount, if any, by which the duty leviable thereon under Schedule A to the said Act, exceeds the duty shewn by such certificate, to have been already paid in respect of the article thus protected. The amount (if any) paid to the Government, in the Presidency of Fort St. George, or elsewhere, as the price of salt, spirit or opium, shall not be deemed to be duty within the meaning of this paragraph.

R. B. CHAPMAN,  
*Secy. to the Govt. of India.*





# The Gazette of India,

## EXTRAORDINARY.

Published by Authority.

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SIMLA, MONDAY, OCTOBER 25, 1875.

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GOVERNMENT OF INDIA.  
LEGISLATIVE DEPARTMENT.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., Cap. 67.

The Council met at Simla on Wednesday, the 13th October 1875.

PRESENT:

His Excellency the Viceroy and Governor General of India, G. M. S. I.,  
*presiding.*

His Excellency the Commander-in-Chief, G. C. B., G. C. S. I.

Major-General the Hon'ble Sir H. W. Norman, K. C. B.

The Hon'ble Arthur Hobhouse, Q. C.

The Hon'ble Sir W. Muir, K. C. S. I.

The Hon'ble Ashley Eden, C. S. I.

The Hon'ble Sir A. J. Arbuthnot, K. C. S. I.

Colonel the Hon'ble Sir Andrew Clarke, R. E., K. C. M. G., C. B.

The Hon'ble T. C. Hope.

### LAW REPORTS BILL.

The Hon'ble MR. HOBHOUSE moved that the Report of the Select Committee on the Bill for the improvement of Law Reports be taken into consideration. He said that this was a matter on which he need not make any observations to the Council, because he had already explained that the Bill was one which consisted solely of what we had already discussed in the early part of the year so far as it had not been disapproved of by the Secretary of State. The Select Committee had made no alterations in the Bill as introduced.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE also moved that the Bill be passed.

The Motion was put and agreed to.

### PANJAB CHIEF COURT APPEALS BILL.

The Hon'ble MR. HOBHOUSE also presented the Report of the Select Committee on the Bill to provide an appeal from certain decrees of the Chief Court of the Panjáb, and moved that the Bill be taken into consideration. He said that this was also a matter on which he need not trouble the Council with any remarks, as he had explained already the extremely simple character of the Bill and how it had been prepared under the auspices of two of the Judges of the Panjáb Chief Court themselves. The Select Committee had proposed no alterations in the Bill.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE also moved that the Bill be passed.

The Motion was put and agreed to.

### NATIVE PASSENGER SHIPS BILL.

The Hon'ble MR. HOBHOUSE also presented the Report of the Select Committee on the Bill to consolidate and amend the law relating to Native Passenger Ships and Coasting Steamers. He said that this was a matter in which there was no motion before the Council, but he should like to make a few remarks upon the alterations that the Select Committee had made in the Bill, because they were of an important character, affecting the principle of the law, and they were not in contemplation when he introduced the Bill. The fact was that this was one of those numerous cases which were begun by aiming at some small changes in the law and at consolidation, and then in the progress of the work before the Committee they found that it was necessary, or at all events expedient, to make a much larger alteration than was at first contemplated. He would briefly state to the Council what the points were in which the Committee had been induced to alter the measure as introduced.

In the first place the law on this subject was governed by three Acts of Council: Act XXV of 1859, Act XII of 1870, and Act XII of 1872. Act XXV of 1859 applied solely to the Bay of Bengal and only to certain specified voyages within that Bay. The voyages to which it applied were those which took place from any port in Madras or Chittagong, or from any port in Orissa to any port on the Eastern Coast of the Bay of Bengal, or the Straits of Malacca, or in Ceylon, and also the reverse voyages, excepting that, for some reason which MR. HOBHOUSE could not explain, the voyages from Ceylon were not included. That Act applied to all sorts of vessels whatever number of passengers they might carry.

Then came Act XII of 1870, and that applied to voyages to or from the westward, namely, those which took place from any port in India to either the Red Sea or the Persian Gulf, or the reverse way. The scope of the Act was affected by a definition of the term "Native passenger ship." That term was said only to mean a ship which carried more than thirty passengers and which was plying from any port in India to any port in the Red Sea or the Persian Gulf, and *vice versa*. The principal part of the Act of 1870 applied to those Native passenger ships. Then there was a separate chapter altogether which applied to what were called "coasting steamers." Those were steam-vessels carrying passengers without any limit of number whatever on coasting voyages from or to any port in British India. Those were the only provisions which affected the purely British Indian traffic. All the other provisions, whether under Act XXV of 1859 or Act XII of 1870, were for certain voyages, most of which were beyond British India and which were all long voyages. Nor did Act XII of 1870 contain anything about sailing vessels which might make coasting voyages; as regarded such voyages, it applied entirely to steamers. If a steamer carried only one passenger, it fell under Act XII of 1870; and it said that those steamers should have certificates which should state the number of passengers which the steamers should carry, but no measurements were given by which licenses should be adjusted. That was a state of the law which was very unsatisfactory, and it was found to bear very hardly on



the good class of steamers, because, not applying at all to sailing vessels, it tended to drive passengers into making their voyages in very rickety craft.

So an Act was introduced in the year 1872, and that effected an alteration of the law by striking out the definition of "Native passenger ship" that was contained in the Act of 1870, and it substituted a very much more sweeping definition; defining the expression to mean a vessel, whether sailing or steam, which carried more than thirty Native passengers. So that by the new definition of the Act of 1872, vessels of every class, sailers and steamers, whether they carried one passenger or a thousand, were swept into the rules which were framed for voyages from India to the Red Sea and the Persian Gulf. That created a hardship greater than before, because the rules which might be applicable to a voyage from Madras to Jeddah were by no means applicable to a voyage from Madras to Negapatam; and yet they were applied to all voyages. The result was that the law had not worked at all; in fact it was very generally disobeyed, and in most cases from the impossibility of obeying it, no notice had been taken of the disobedience.

When this Bill was introduced, it was on account of the representations made by the British India Steam Navigation Company to the effect that they could not observe the rules laid down by the law; and, in the first instance, the Bill observed the classification of vessels and voyages established by the existing law; but it was proposed to relieve the hardships that were felt by giving a greater power to the Executive to exempt vessels from the existing statutory rules, and to make the law more efficient by empowering the Executive to make special rules for different voyages. When the Committee came to work out this proposal, it was attended by a very intelligent gentleman named Kittredge, who carried on a passenger traffic business in Bombay; and he pointed out, in the first place, that there was a great deal of uncertainty introduced by leaving those matters to Executive rules, and in the second place, that the Local Governments, though they must always have a great deal to say to those rules, could not possibly deal with the matter efficiently; because, from the very nature of the subject, the voyages to which the rules would apply would be under the authority of no one Local Government, so that it was a matter with which only the Supreme Government could deal with quite adequately. At the same time, Mr. Kittredge suggested that voyages and ships might be classified in a different way so as to have an efficient law which yet would not work hardship.

The proposals now made were founded on Mr. Kittredge's suggestions. In the first place the Committee adhered to the rule that a ship, in order to come within the provisions of the Act at all, should carry more than thirty passengers. It was not worth while to carry supervision lower than that. That would alter the law as regarded the Bay of Bengal, where at present the provisions of the Act of 1859 applied to all vessels. Then, instead of making a distinction between coasting voyages as performed by steamers, and other voyages, it was proposed to divide all voyages into long and short voyages. The dividing line proposed by Mr. Kittredge was that the voyage should be a long voyage if the ship, under ordinary circumstances, would be more than four days out of port. Subsequent representations, however, had induced the Committee to extend that period to five days, and they now proposed that, if a ship, under ordinary circumstances, was likely to be more than five days out of port, that should be considered a long voyage, and all other voyages short ones. Then they had made two sets of provisions: one of a very simple character, which was to apply to short voyages, and the other more elaborate and more restrictive, which was to apply to long voyages. In point of fact, they were assured that the two classes of business were of a totally different kind; that the voyages in which ships were more than five days out of port included all the pilgrimages, and all the emigration to Singapore, the Straits Settlements, and Burma; and that the coasting traffic proper would all fall within the definition of short voyages.

Having defined in the abstract what was a long and what a short voyage, the task remained to apply the definition to particular voyages. That, must

be the work of the Executive Government from time to time, and it was proposed to give the Executive Government power to declare with respect either to a steamer or a sailing vessel, whether a voyage should be a short or a long voyage.

The Committee did not think it desirable to introduce so great an alteration of the principles which underlay the whole of the law without consulting the local authorities; and although they did not at the time make a report to the Council, as they thought the matter too uncertain for that, they had consulted the maritime Local Governments, and the answers received from them and the naval authorities under them led the Committee to believe that the classification proposed by Mr. Kittredge was a sound one and would lead both to the simplification and the efficiency of the law.

There was one other point which it was proposed to alter. At present, so far as regarded the rules for the measurement of space, and for proportioning the number of passengers to the size of the vessel, they rested upon the tonnage of the vessel. The Committee were informed that this was not a measurement applicable to the vessels engaged in this business, and that it was not by the tonnage that we should calculate such measurements. They had therefore provided that those measurements should be calculated entirely in superficial and cubic feet.

Those were the more prominent alterations that the Select Committee had made in the principles of the existing law and of the Bill as it was introduced. Of course, such alterations of principle had led to numerous alterations of detail; but he need not trouble the Council now with any further explanation, because there was no motion before them to take the Report into consideration. It was proposed that the Bill should be republished, and that criticisms from the Local Governments and all persons concerned should be invited, before it was again brought before the Council.

The Hon'ble MR. HOBHOUSE also moved that the Bill as amended be published in the *Gazette of India* in English, and in the *Calcutta Gazette*, the *Fort St. George Gazette*, the *Bombay Government Gazette*, and the *British Burma Gazette* in English and in such other languages as the respective Local Governments thought fit.

The Motion was put and agreed to.

#### CENTRAL PROVINCES LAWS BILL.

The Hon'ble MR. HOBHOUSE also presented the Report of the Select Committee on the Bill to declare and amend the law in force in the Central Provinces.

#### OBSOLETE ENACTMENTS REPEAL BILL.

The Hon'ble MR. HOBHOUSE also introduced the Bill for the repeal of certain obsolete enactments, and moved that it be referred to a Select Committee with instructions to report in two months. He had explained at the last meeting of the Council what the object of the Bill was. It was one of the measures that we had taken up with a view to get a convenient edition of the Statutes and Regulations which applied to India.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE also moved that the Bill be published in English in the *Gazette of India*, and in the local Gazettes of the several Provinces.

The Motion was put and agreed to.

#### BOMBAY REVENUE JURISDICTION BILL.

The Hon'ble MR. HOPE presented the further Report of the Select Committee on the Bill to limit the jurisdiction of the Civil Courts throughout the Bombay Presidency in matters relating to the Land-revenue, the charge of which, he observed, had devolved on him in consequence of the departure for England of Sir B. H. Ellis. As the subject was an important one, and the



*personnel* of the Council had changed considerably since the Bill had been introduced, he would briefly recapitulate its origin, and then explain in detail the grounds of the present recommendations of the Committee.

The Bill was first introduced by Sir B. H. Ellis in August 1873, and its scope was to place the so-called "Old Provinces" of the Bombay Presidency, where the Civil Courts are not excluded from taking cognizance of matters connected with land-revenue assessment, exemptions, &c., upon a level with the "New Provinces," where they are. By the "New Provinces" was meant Khandesh, the Deccan, and the Southern Mahratta Country, which were conquered from the Peishwa, together with certain other districts acquired by treaty, exchange, lapse, &c. The "Old Provinces" comprised Gujarat, the Konkan, and Canara, and were only two-sevenths in area, and considerably less than half in population, of the whole Regulation Provinces of the Presidency. The reasons given for the proposed change were, that the Civil Courts had not the technical knowledge to deal with assessment; that they might in a particular, and perhaps ill-argued, case go counter to the entire policy of Government; that suits might so multiply as to be executively embarrassing and politically injurious; and that cases had actually arisen showing good grounds for this view. The exact extent to which jurisdiction should be barred was left for discussion.

In April 1874, the Committee's first Report was presented to the Council. It left the principle of the Bill unchanged, but recommended considerable alterations in its phraseology, chiefly in accordance with the North-Western Provinces Land-Revenue Act (XIX of 1873), and added provisions to secure sufficient rights of appeal to the Executive in lieu of the resort to the Courts, which was to be withdrawn.

After this Report, further discussion ensued with the Bombay Government as to the wording of the Bill, and the whole question had also to be reconsidered in connection with a proposal from them to consolidate the entire Land-revenue law of Bombay, which shortly took form by the introduction of a Bill into the local Legislature in January last. Then occurred the departure of Sir B. H. Ellis, followed soon afterwards by that of Messrs. Bayley and Dalrymple, who were members of the Select Committee. Consequently, it was only recently that the subject could again be taken up.

The present members of the Committee, who were all new, with the exception of the Hon'ble Mr. Hobhouse, had examined the subject *ab initio*. They fully concurred as to both the necessity for legislation and the principle on which it was proposed to provide it, and had in their report merely recommended certain modifications in the scope of the Bill. In order to assist the Council in appreciating the position which they had taken, MR. HOPE would offer a short sketch of the history and present condition of legislation on the subject of land-revenue, as far as the Civil Courts were concerned.

The early Regulations of Bengal, Madras and Bombay left the acts of officers of the Government open to question in the Civil Courts to a considerable extent; but at the same time the language used was so vague, and in some cases even so contradictory, that it was difficult to determine what were the exact limits intended by the legislators; and the fact that the Courts for a long series of years never practically interfered in technical questions connected with the revenue would seem to show that their powers were not in those days understood as having the extensive application which has of late been claimed for them.

In *Bombay*, the subjection of the Executive to the Civil Courts in revenue matters, whatever may have been its exact limits, which Mountstuart Elphinstone's revised Code of 1827 contained, was even at that date felt to be unsuitable to, if not dangerous for, the New Provinces; and the action of the Courts was therefore by that Code barred in those Provinces as regards the assessment and collection of the land-revenue, the administration of alienations from it of all kinds, and of grants and allowances not hereditary, village boundary disputes, and certain minor matters. This exclusion of the Courts continued

in all essentials up to the present day, having been maintained by Acts XI of 1852 and II of 1863. The principle had also found further development through the whole Presidency in the Acts of the local Legislature: in Act II of 1866 (section 6), with reference to superior holders' rents, and in Act II of 1871, when it was applied to an assessed tax. As regards holdings for service, the law had since 1833, if not before, been that they were "resumable or continuable" at the pleasure of Government. In *Madras*, a definite and material restriction regarding ináms was placed on the Courts by Regulations in 1831 and subsequent years; while in matters of assessment they did not appear to have ever practically interfered up to 1864, when they were effectually excluded by the proviso in *Madras Act II*, that "no Court of Civil Judicature shall have authority to take into consideration or decide any question as to rate of land-revenue payable to Government," &c. In *Lower Bengal*, the fact of a permanent settlement, the paucity of ináms, and the absence of village-officers, had rendered the question of less moment; but a special procedure for ináms existed, and in practice the Civil Courts had not often interfered in the subjects now under discussion. In the *North-Western Provinces*, including the permanently settled districts, the Courts had now been effectively barred by Act XIX of 1873, which however was but little of an innovation except in those districts. In the *Panjab*, Act XXXIII of 1871 only gave legal form to the exclusion which already existed; and in *Burma* and *Oudh* analogous exclusion was understood to prevail. As regards the land-revenue, it might thus be safely said in general terms that in no part of India, except perhaps in Bengal and the "Old Provinces" of Bombay, did the Courts possess a power of going into the question of the principle and amount of assessment; and even in those "Old Provinces" the exercise was only of recent date. As regards the entire class of State grants and alienations which were now technically termed pensions, Act XXIII of 1871 had consolidated throughout the Empire the exclusion of the Courts which the local laws had already more or less completely provided. Finally, the principle was applied to an assessed tax by the series of Income Tax Acts from 1860 downwards.

Thus, the whole course of legislation during the last half century had been gradually to withdraw from the Civil Courts to a greater or less extent, matters affecting the public revenue, whether in its assessment, its collection, the adjudication of alienations from it, or the remuneration of public servants connected with its administration. It was remarkable, Mr. HOPE continued, that the position at which we had thus arrived in practice corresponded pretty closely with what was well known, and clearly acknowledged by historical and political writers, to be in theory the position of the State, at least in India, namely, that of being the highest authority in matters of taxation, vested with the prerogative and the duty of imposing and equitably distributing the public burdens, of conferring exemption from them to such extent and for so long as to it appeared expedient, and of adopting such measures as might be required effectually to ensure its orders and grants being understood and acted upon. He used the term "the State" in its widest sense, including the Legislature partly composed of non-official members. This prerogative of taxation was conspicuously asserted in section 2, clause 2, of Bombay Regulation XVII of 1827, which provided that nothing "shall affect the right of Government to assess to the public revenue all lands, under whatever title they may be held, whenever and so long as the exigencies of the State may render such assessment necessary." Were there any doubt as to this being, in fact, the common law of India, it would be removed by a glance at the Native States around us, where all the powers which Mr. HOPE had mentioned were exercised without question. In the course of his own political experience, Mr. HOPE had come across numerous instances in which the British Government had acknowledged this prerogative in such States. The latest was that of the Gaikwár. In the proceedings connected with the first Commission it was never, he believed, questioned that the Chief had full power to regulate his assessments, or to resume any or all grants of money or land, whether made by himself or his predecessors; but it was merely held to be inconsistent with good government and the preservation of peace and order to exercise this power in a harsh, capricious, or vindictive manner.



Such being the fundamental principle, it would be inconsistent and improper for Government to abandon its functions in favour of the Civil Courts, or any other authority. The establishment of Courts of Justice independent of the Executive was a most important element in the good government of a country. But it was essential to their healthy action that they should not have assigned to them a province alien to their peculiar capabilities. The maxim *ne sutor ultra crepidam* was no less applicable to them than to others. In a country where the jurisdiction of such Courts did not rest on immemorial custom, but was of modern introduction, it was necessary to define by written law what subjects should or should not be referred to them: and of that matter the State must, by the nature of the case, be the final judge.

What matters should or should not be so referred was the essential point in the present Bill. Here it was obvious that much depended upon the grade of cultivation and the political circumstances of the province to be dealt with. Where wealth and education were widely diffused, and private rights were defined with nicety and generally understood, the people might be left to protect themselves in the Civil Courts to a greater extent than where their ignorance would make the privilege a farce, or their turbulence might convert it into a source of danger. Consequently, we found the line drawn at different points in the various provinces of India, from Bengal at one extreme to Burma at the other. Considering the high advancement of the Western Presidency, there could be no doubt that the line should be drawn as high as possible, that is, that to the Courts should be referred all matters which were not in themselves unsuited for their cognizance. What matters the Committee deemed suitable could not be better stated than in the words of their Report:

"We consider that the true distinction between the province which is more proper to a Civil Court and that which is more proper to Revenue officers is to be found, not in the nature of the privilege claimed, but in the nature of the evidence by which it is supported. If the evidence consist of formal State documents, such as a law expressly creating or confirming an exemption, or a sanad, grant, judgment, or other formal adjudication affecting a particular property, then there can hardly be any dispute except one of construction, which is best remitted to a Civil Court. But where the question turns upon the validity of an alleged informal guarantee, or on the genuineness or authenticity of documents, though they may be said to emanate from a Native Government, or on oral evidence, and still more, when technical and special knowledge, historical research, or an accurate understanding of the political effect of political events, more or less distant and obscure, are indispensable, then we consider that the decision should rest with Revenue officers, and ultimately with the Government. For the Government is likely to have better information supplied to it; may select peculiarly skilled persons as its advisers; is not dependent on the facts and arguments which the parties may happen either to supply or to omit; is more accustomed to deal with affairs on a large scale and on a moral basis; and alone has a direct political responsibility for its actions, and is at liberty to guide itself thereby."

He would next proceed to show the application of this principle in the amended draft of the Bill, as also to touch briefly on certain other matters now provided for in the latter. He did not propose to go through every section of the measure, but only to notice a few leading features. One point to which he wished especially to refer was to be found in the first section. The previous Bill provided, in clause (b) of that section, that the Act should not be applied in any degree whatever to towns and cities, for which there was a special law, namely, Bombay Act IV of 1868. The Committee considered, however, that there was no valid reason for treating matters which were really of a technical nature, such as assessment, boundaries, &c., differently in towns from elsewhere. It was, perhaps, true that the State had, to a considerable extent, forgone its rights in towns and cities, but at the same time it had very large rights remaining, and these rights were infinitely more valuable and as intricate to determine as, if not more so, than any similar rights which it possessed in the country. On the other hand, it so happened that a great portion of the questions which, as a matter of fact, did arise in towns were connected with exemption from land-revenue, and therefore these questions would, under the proviso in section 4 of the amended Bill, actually remain under the cognizance of the Civil Courts. In consequence of this it might be said that even any allusion to Act IV of 1868 was now superfluous. Probably it was so; but the Committee thought it better to let the Bill stand as now drafted, for the purpose of giving the public a more

complete assurance that there was no intention of withdrawing from the Courts matters relating to exemptions of this particular class. He might also add that cases which were actually cases as regards the right of property, as distinct from occupation, would not be affected by the Bill. In view of these explanations, he trusted that there would be no reasonable ground for discontent at the extent of the change which had been made.

Passing on to section 4, that section was the key to the whole Bill. Clause (a) was simply a re-enactment of the existing Bombay law, which, as he had already mentioned, was likewise distinctly affirmed, as regards offices, by the Pensions Act. Clause (b) no longer contained, as it did in the first draft of the Bill, words referring to the question of the validity of an engagement made with Government for the payment of revenue; because, under the principle which the Committee had adopted, an engagement being a definite and specified affair, might very well be left to be interpreted by the Courts. As illustrations of the sort of engagements which he referred to, he might mention Abkari, Ferry, or other contracts which were given on a large scale in the Bombay Presidency.

The next clause (c) was one which provided for the collection of the land-revenue, and was a necessary corollary of the principle that the State must have the power of imposing what revenue it thought proper. Of course, to allow the State to impose what revenue it thought proper, and then to permit the collection of that revenue to be disputed by the Courts, would be altogether inconsistent. At the same time the Committee had reserved, by the important provisos under section 5, namely (a) and (c), which should be read together with this clause, a power to the individual to dispute in a Civil Court whether the amount which had been demanded of him was really correct, and also to allege that he was not the person from whom the demand ought to be recovered. This provision was more favourable than the law of Northern India, where the money must be actually paid under protest to admit of a suit being filed. As regards the second sentence in clause (c), section 4, about setting aside sales in consideration of irregularities or mistakes, the Committee had allowed the previous phraseology to stand, because the Bombay law on the subject of sales, which, though perhaps, quite sufficient, in reality, for the protection of the interests of the subject, was not at present very clearly enunciated, would be amended in the new Code now before the local Legislature.

Next as to clause (d). This should be read in connection with clause (b), section 5. The reason of this exclusion obviously was that the Government could not be dragged into Civil Courts in matters in which they had no concern merely at the beck and call of private parties, or compelled to keep their records in any particular way which the Courts thought best. At the same time, there could be no doubt that it was fully contemplated by the Bill that any decrees of Court in private matters which were passed, would, in practice, be fully recognized by the officers of Government. Clause (e), which reserved the question of the distribution of land on the partition of estates, similarly proceeded on the principle that the Executive Revenue Officers were the only competent judges of what were the relative values of different parts of a field or an estate, and alone fit to decide on similar technical matters.

Clause (f), again, must be read in connection with the proviso which followed almost immediately after it, and which he need not dilate upon, as it spoke for itself; but he might notice that the sentence under (f), with regard to setting aside any cess or rate authorized by Government, was consistent with the principle which he had already pointed out as being established in the case of the Income tax, and in Act II of 1871. With regard to the other sentence under the same head, respecting the occupation of waste or vacant land belonging to Government, he might point out that the words "belonging to Government" were put in to show that it was not intended by this to bar suits against Government where a man claimed a piece of land as his own private property, but merely to bar vexatious suits regarding land admittedly belonging to Government.

He had already, in the course of his remarks, said all that was necessary regarding section 5. Sections 6, 7, 8 and 9 were merely a re-enactment of



the existing law now scattered in a variety of different places in the Bombay Regulations and Acts. This re-enactment had been thought desirable in order to put the whole of the provisions about the jurisdiction of the Courts in one place, and so to let people know fully and clearly the remedies which they possessed against any illegal action on the part of Government officers. As to sections 10, 11 and 12 which related to appeals, they owed their origin to a desire to secure a thorough appeal up to the Executive Government in all cases in which, owing to mistake or accident, the right might not be found in the present law, which right of appeal was the more necessary at present, because we were taking away the resort to the Courts which had hitherto existed. But at the same time the Committee had considered it only reasonable to preclude the individual from resorting to the Courts until he had exhausted all the rights of appeal which the law allowed. Then followed three more sections, 13, 14 and 15, which it had been thought advisable to provide with a view to obviating suits against Government being prolonged or inefficiently tried, and to ensure any case being promptly taken up, and if necessary referred to the High Court on the question of jurisdiction. He need scarcely enlarge on the political and executive inconveniences which ensued when a point was raised with Government, and after three years or more consumed in litigation, it was perhaps eventually ruled that the Government were right, or even that the Court should never have taken up the question at all.

The concluding section of the Act had perhaps already been sufficiently explained by Sir B. H. Ellis. A certain section of a Bombay Regulation was inadvertently repealed in September 1871, by the Land Improvement Act, and it was now proposed to reinstate this section, giving powers for the recovery of advances made by Government for rebuilding villages which had been swept away by inundation, or houses destroyed by fire, purchasing bullocks or seed, and similar objects which could not come within the terms of the Land Improvement Act.

In conclusion, he had only to point out that, while the effect of the proposed changes would be to take away some of the powers hitherto enjoyed by the Courts in the Old Provinces of the Bombay Presidency, it would also, on the other hand, admit them to a very large jurisdiction in the New Provinces never hitherto exercised. Now, with regard to that, it was a remarkable fact, and worthy of notice, that in the whole of the petitions presented to Government in connection with this Bill, it was nowhere seriously attempted to urge or prove that the exclusion which actually existed in the New Provinces had been productive of any harm. Therefore, he thought, we might fairly argue that if the great exclusion which at present existed in the New Provinces had produced no harm, the very much more limited exclusion which it was now proposed to introduce in the other districts would not be productive of any harm either. It was said in one of the petitions that the Old Provinces had hitherto thriven under the shadow of the Courts. Well, with regard to that it might be remarked that the New Provinces had also thriven without the shadow of the Courts. However, as a matter of fact, the truth lay in this, that the Courts had scarcely ever interfered in revenue matters in the Old Provinces till of late years, and that probably whatever thriving was to be found in these Provinces which was not attributable to the ordinary progress of society was attributable to the conscientious liberality of the Revenue Officers themselves, who he knew, from his own experience, and otherwise, habitually decided, and had decided thousands of cases, in favour of the subject, which, if they had been referred to the Civil Courts, must, under the rigid rules by which the Courts were conducted, have been decided in favour of the Crown.

The proposed Bill thus appeared to be based upon principles which were just and liberal, and which had been approved, as Sir B. H. Ellis mentioned, by no less an authority than the late Chief Justice of Bengal, Sir Richard Couch, who was peculiarly well qualified to pass a judgment upon a Bombay question. It also had the approbation of other high legal authorities. He had, therefore, every confidence that the Bill would be approved by this Council, and that it

would bring about a satisfactory termination of the difficulties which had led to its introduction.

The Hon'ble MR. HOPE then moved that the Bill and the further Report of the Select Committee be published in the *Gazette of India* in English and in the *Bombay Government Gazette* in English and such other languages as the Local Government might think fit.

The Hon'ble MR. HOBHOUSE said—"As this Bill bears upon the administration of justice, and as it has been my duty to pay attention to some of the questions it deals with, I should like to make a few remarks on the shape it has now assumed; the more so because, as Mr. Hope has observed, the casualties affecting our Committee have been so severe that I am the only survivor of the party. I do not propose to speak of anything but the most general principles involved in the measure. There are many details of it, especially among those additions which have been made by way of consolidating the law, which require an intimate practical acquaintance with revenue work to understand properly. I can only dimly form an opinion on such matters, and certainly should not presume to speak of them in this Council.

"Now the Council are aware that there was a good deal of objection made in the Presidency of Bombay to this Bill in the shape in which it was introduced: and I have been re-perusing divers petitions and pamphlets which have reached our hands, and which though numerous are mostly of one type and have evidently proceeded from only two or three sources. Petitions, however, must be estimated not so much by their numbers as by their contents, especially when the subject they deal with is one that cannot be judged of upon a superficial view, but requires a good deal of study, training and special knowledge to understand.

"Of the contents of the petitions I wish to speak with all respect. I do not think that the petitioners are by any means wholly wrong. They have indeed weakened their position by exaggerations, and the greater part of their arguments is rested on the erroneous idea that the Bill as introduced was intended to withdraw Revenue officers and their proceedings wholly from the control of the Civil Courts. The case of the petitioners would have stood better if they had set themselves to study the Bill and had worked out the problem how far it would actually interfere with the jurisdiction they wish to preserve. In presenting the former Report of the Committee our late colleague Sir Barrow Ellis mentioned that one of the pamphlets published on this subject contained a list of twenty-five cases which Civil Courts had decided against Revenue officers. The implication of course was that all such cases would be withdrawn from the Civil Courts by the Bill, and that much injustice would be left unredressed. On examination, however, he could only find that two cases out of the twenty-five would be withdrawn from the Civil Courts by the operation of the Bill. I also have examined the cases and bring out the same result. And I add that the two cases in question are such as should be kept in the hands of the Revenue authorities.

"At the same time, and all misapprehensions and exaggerations notwithstanding, I think that some fault was justly found with our Bill as we framed it at first. If it had been carried in that shape it would have excluded from the cognizance of Civil Courts some classes of cases which I myself think ought to fall within it. And I believe that as it has now been modified under prolonged discussions and under two operations of the Select Committee, it represents more accurately than at first the most advantageous dividing-line between those matters which should, and those which should not, be treated as ordinary matters of litigation.

"It is true that the measure is still very far from according with the views of the petitioners. They propose to keep the law of the old provinces of Bombay just as it is, and to assimilate the law of the new provinces to it. Now I will just show to the Council what sort of a law it is which we propose to change and others desire to keep unchanged.



"The law is contained in Regulation XVII. of 1827, and, as was customary with the laws of those days, it mixes up with matter proper for legislation a quantity of directions to Revenue officers which would now be kept off the enactments and left to executive orders. I will read the passages which are germane to the present purpose :—

" II. *First*.—All land, whether applied to agricultural or other purposes, shall be liable to the payment of land revenue to Government, according to the established principles which govern the assessment of that description of land to which it belongs, except such as may be proved to be either wholly or partially exempt from the payment of land revenue, under any of the provisions contained in Chapters IX. and X. of this Regulation.

" *Second*.—Provided, however, that nothing contained in the preceding clause, or in the enactments therein cited, shall be understood to affect the right of Government, to assess to the public revenue all lands, under whatever title they may be held; whenever and so long as the exigencies of the State may render such assessment necessary.

" IV. *First*.—When there is no right on the part of the occupant in limitation of the right of Government to assess, the assessment shall be fixed at the discretion of the Collector, subject to the control of Government.

" *Second*.—When there is a right on the part of the occupant in limitation of the right of Government, in consequence of a specific limit to assessment having been established and preserved, the assessment shall not exceed such specific limit.

" IX. *First*.—The Collector's decision upon any question arising out of the provisions of the preceding sections shall, in the first instance, be obeyed and acted upon as the rule.

" *Second*. But if any person should deem himself aggrieved by any such decision, he may either present to the Collector a petition, addressed to Government, praying for redress, or may file an action against the Collector in the Civil Court, under the ordinary rules, or he may pursue both methods at the same time."

"The effect of all this is that although the assessment is to be fixed at the discretion of the Collector, that discretion may be challenged before a Court of Law: and if the discretion of the presiding Judge happens to be something different, the decision of the Collector must be overset. There is not a single question which can arise in the course of a settlement, whether it relates to the fertility of soils, or the prices of produce, or any other matter if any there be even more impossible for a Court of law to investigate, which may not be taken out of the skilled hands that can deal with it and carried before a tribunal that knows nothing about it. The Civil Judge may even control the broadest principles that lie at the bottom of an assessment. He may disapprove of the portion of the assets which the Government think it right to take. He may think that the assessment ought to be governed by prevailing rates of rent instead of the productiveness of the soil and the rates of prices, or he may think the contrary. He may even decide that the exigencies of the State are not such as to warrant the imposition of such an assessment as the Collector has decided to impose. In all these cases the decision of the Revenue officer is expressly made disputable in a civil action. In short, the whole land-revenue system of the country is by this Regulation made subject to the control of the Civil Courts.

"Now we are told that this was the deliberate policy of a great statesman, Mountstuart Elphinstone; that it is the fundamental land-law of the country; and that to alter it will be to take away the feeling of security which the people have against the encroachments of an irresponsible executive. I say on the contrary that no system of revenue could possibly stand such a strain, and least of all such a system as that of the Indian land-revenue, where the amount taken from the cultivators from time to time is, and always has been, and necessarily must be, at the discretion of the Ruler, until a permanent settlement is made. That Mountstuart Elphinstone did not intend to abandon this discretion is manifest from the passages that I have read. What precisely he did intend, how far he contemplated that matters connected with land-revenue should be contested by ordinary litigation, it is impossible to say, for the Regulation contradicts itself in more places than one. But one thing we may be pretty sure of, and that is that nobody would be more surprised than Mountstuart Elphinstone himself to find that, owing to unskilful processes in framing his law, the discretion of the Ruler might be exercised by the Civil Court, and

further that, owing to administrative changes which he could not foresee, that Civil Court might consist of professional lawyers.

"When we set up an income tax we do not allow every individual to dispute his liability in a Court of law; we take care to keep the decision in the hands of special officers, namely, the Revenue officers of the Government. And yet the amount of income tax is not discretionary with the Ruler, but is fixed by law; the controversies about it turn on the amount or nature of a man's income, facts which may be proved by ordinary evidence and handled by ordinary legal methods just as well as any other disputes about matters of fact. But even in such a case as this it is felt that the Treasury would be imperilled and the public service seriously embarrassed if every difference between the collector and payer of taxes could be the subject of a regular lawsuit.

"On every ground then, both because it is a public necessity that the greatest source of Indian revenue, the land-revenue, should be collected without vexatious litigation, and because its amount turns on considerations which are familiar to Revenue officers and are almost incapable of treatment by the methods of Courts of law, it is desirable that such Courts should not interfere in the kinds of question to which I have been referring. In parts of the Presidency of Bombay they can so interfere. In the greater part of the Presidency they certainly cannot; throughout the greater part of India they certainly cannot; and I believe they cannot in any other part of India. In truth, in the district governed by the Regulation of 1827, the extent of jurisdiction given to the Civil Courts for a long time escaped observation: but we are told that there has of late years been an increasing tendency to dispute the decisions of Collectors in Courts of law. Recent discussions have now made people aware that they may litigate any question they please, and it is certain that unless we alter the law, both we and the Civil Courts have serious trouble before us.

"I will just give the Council an illustration of the mode in which circumstances draw one question after another into Courts of law when the jurisdiction exists; and it is an illustration of the greater value because it also shows how the Judges themselves naturally feel—as I should feel if I were one of them—the uncongenial nature of the functions which our law forces on them.

"I hold in my hand the report of a case decided in the Bombay High Court, entitled *Govind Vinayák Gadre v. The Collector of Ratnágiri*. The point was this. A man had his assessment raised. He contended that for the current year he was not bound to pay the increased amount because he had not received a certain notice, and he filed a plaint to enforce his contention. The jurisdiction was disputed by the Collector. The Court's judgment on the objection was as follows:—

"It has been strenuously argued before us that the plaintiff, if injured by the act of the Collector in ordering the levy of the new rates from him, should have appealed to the superior Revenue authorities and to Government before he had recourse to the Civil Courts, and that as he had not done this, his suit should not have been entertained. We are of opinion that it was competent to the plaintiff under section 9 of Regulation XVII of 1827, if aggrieved by the Collector's decision directing him to pay increased assessment, to file an action in the Civil Courts, whether he applied for redress to Government or not. It was not the act of the Survey Officer fixing the new rates of assessment, subject to the sanction of Government, of which the plaintiff complained, as the Joint Judge appears to have considered. It was the act of the Collector, in directing the levy of the new rates from the plaintiff during the fiscal year 1867-68, to which the plaintiff objected; and the law we have cited has expressly given him the remedy to which he has had recourse."

"Now, what does that mean? It surely means that in the opinion of the Court the discretion of the Survey Officer in fixing the assessment was a sort of question which could not properly be argued before them, though the smaller and more definite question about the act of the Collector in giving or withholding notice was expressly submitted to them by the Regulation. The former point was not the one to be decided, but that was obviously the way in which it struck their minds, though what they said was extrajudicial.

"Well, but then comes the case that was described by Sir Barrow Ellis at this table; and there the very principles of assessment were brought into question.



The plaintiff's contention there was that the Ruler was taking too large a portion of the assets. Did the Court then treat the question as one not arguable before them? Did they say that the case supposed in the former judgment as one which ought not to come before a Civil Court had now arisen and therefore they would not entertain it? They did not say so, and they could not say so. They entertained the case, as they were bound to do, and decided it on the evidence before them. And inasmuch as the Collector had relied entirely on the lack of jurisdiction, as it had not occurred to him that he was bound to defend the principles of his assessment to the satisfaction of the Judges, he had given no evidence to show that those principles were right, and so the decision necessarily went against him.

"I learn from the papers laid before the Committee either that fault has been found with this decision, or at least that it is supposed that the present measure was dictated by the feeling that the Court had done wrong. All I can say is, that I find no fault with the decision. If I did, I should say that the remedy was by appeal, not by this measure. The learned Judges seem to have acted in strict accordance with the duty cast upon them by the law. What I say is, that the law is in fault; that it bears hardly on all concerned; that it is not right towards the public or towards our Revenue authorities that they should have to vindicate the principles of their assessments before Courts of law, nor right towards our Civil Judges to saddle them with such a jurisdiction.

"Now if I have carried the Council along with me, they will, I am sure, concur with the Committee in thinking that the most sweeping and by far the most important clause in this Bill should be maintained: I mean that which is headed 4 (b) and which excludes from the cognizance of Civil Courts objections—

"to the amount or incidence of any assessment of land-revenue or cess or rate authorized by Government, or

"to the mode of assessment, or to the principle on which such assessment is fixed."

"The provision which comes next in importance is that which is headed 4 (f). It excludes from the cognizance of Civil Courts the following matters:—

"(f) claims against Government—

"to hold land wholly or partially free from payment of land-revenue, or

"to receive payments charged on or payable out of the land-revenue, or

"to set aside any cess or rate authorized by Government."

"It must be obvious enough that nothing requires to be more carefully watched than a claim of exemption out of a general system of contribution to the public necessities. It is a thing constantly lost sight of, though it is but a truism, that an exemption to one only means an additional burden to his neighbours. We have an analogous case in our own history. Tithes were imposed by common law for important national objects, the maintenance of churches, clergy, and the poor. They were charged upon all land except land dedicated to the clergy themselves. And with regard to other lands our common law would not hear of such a thing as an exemption. Every acre of land in lay hands was forced to pay tithes, and claims of exemption were absolutely disallowed by common law. In India, our law has not been so strict, I suppose on the ground that the Rulers of the country have been in the habit of rewarding services by granting exemptions of this kind. But the public importance of tithes cannot compare with the importance of that which is the back-bone of the fiscal system of India. And inasmuch as it was in accordance with native principles to consider grants by the Ruler couched in indefinite terms or in terms importing a perpetuity, to be revocable at his will, the Ruler always held in his own hands the means of correcting the weakness or carelessness or improvidence of his predecessors or himself. We are much more tender about disturbing any existing state of things; but we have to be especially careful to see that the public at large are not made to suffer by the mere circumstance that particular lands have in fact been held as exempt, or have been assessed at the same rate, for long periods of time.

"Now enquiries into such cases as these require an accurate acquaintance with the history and customs of the country, and their decision is often justly affected by political and social considerations. A Court of law is simply dependent upon the facts which the parties happen to put in evidence before it, and it must draw the logical inference from those facts, whether for or against the individual claimant, without any reference to or responsibility for the political consequences of its decision. It would be a very difficult thing to get a complicated case of this kind properly presented to a Court of law, nor do I think that such a tribunal is so likely to come to a just and fair decision as an officer or commission skilled in the very subject-matter.

"A case has recently occurred which illustrates these remarks very strongly. The inhabitants of a considerable tract of country in Canara have claimed what is in effect a permanent settlement of the land-revenue. They cannot point to any Regulation or formal act of Government; but they rely on promises alleged to have been made by Sir Thomas Munro, on certain kowls or leases alleged to have been granted by British officers in charge of the district, and on the allegation that their assessments have in fact been unchanged for a great number of years. I am speaking of the case at great disadvantage, because I have not read the judgment of the Court. But I have read a memorandum upon the case by the officer charged with its conduct, and I find that its decision involves an accurate enquiry into the history of the country and its administration from times anterior to Hyder Ali down to the present moment. Indeed on some points the investigation goes back upwards of five centuries; though here it rests upon materials which appear to have been in the hands of Sir Thomas Munro, but which now have disappeared. The Government have been exposed to nearly one thousand lawsuits instituted by different landholders, each claiming a reduction of his assessment on the grounds I have mentioned. Now we have no reason to complain of the treatment of the case, for the decision has gone in favour of the new and increased assessment. But I say that such a matter as this, even independently of its great magnitude and consequent political importance, is not a proper kind of case to bring before a Court of law. And it is only a foretaste of what will infallibly happen on a still larger scale if we leave our Courts of law to be the ultimate arbiters of all revenue questions.

"There are, indeed, grounds of exemption as to which, if a dispute arises, I would sooner see it settled by a Court of law than by the Revenue authorities. If there is a formal specific bargain between Ruler and subject, or in other words between the public and an individual; if that bargain has taken the form of an enactment or a written agreement or grant; if there has been a judgment recorded in favour of an individual against the public; such cases as those resemble claims regarding private property and turn on the same kind of evidence and reasons as ordinary lawsuits. Such cases we propose to leave to the decision of Courts of law, and we have made an important modification of the Bill for that purpose. But with regard to claims of exemption such as that which is made in Canara, I feel certain that the common weal will be best consulted by leaving them in the hands of the Revenue authorities.

"Now I have dwelt upon the most general and important features of the Bill, and in doing so have noticed some general arguments used against it. Before I conclude I wish to notice one more of these arguments, a very favourite one it seems, because I find it repeated frequently in the petitions. It is said that a man ought not to be judge in his own cause, and we are told in one of the petitions, a very well expressed one by the inhabitants of the Kallian Taluqa, that the Legislature has from time to time affirmed this fundamental principle of all law as regards the older districts of the Presidency. I have no doubt that both Legislative and Executive have affirmed the principle as regards the whole Presidency, and I hope the time will never arrive when either will affirm the contrary principle; but it is a different question whether such a principle is applicable to the case before us.

"In one sense a Collector who has passed an original decision is interested in maintaining one side of the case. He has committed himself to the view that



he thought right, and then, though his private interests are not concerned in the matter, he is no longer an impartial judge on the question whether his view is right or wrong. But how does that consideration apply to the Commissioner who sits in appeal from him, or to the Governor in Council, who sits in ultimate appeal over all? Indeed, how does it apply to the Collector himself in framing his original judgment? We have been told to-day, and I have often been told before, that the comfort of the local officers is so directly affected by the contentment or discontentment of those among whom their lives are spent, that they have a strong motive for indulgent dealings with them. In fact the Government and its officers are only the representatives of the public, and whatever interests the public at large have, they have. They are interested in seeing that nobody escapes his fair share of the public burdens, and they are also interested in so dealing that people shall be contented, and not think themselves unjustly treated. The latter of these interests is quite as strong as the former. I can remember two important cases in which controversies of this kind have come up to the Government of India; and in each of these cases the latter class of considerations was quite as strongly advocated as the former, and in each case it was the prevailing element in the decision. In the case of private litigants all their passions and all their pecuniary and private interests are bound up in one issue of the suit; they have no balance to incline them to the other side. That is the reason which underlies the maxim that a man shall not be judge in his own cause. But to put the case between the officers of Government and the payers of land-revenue as one in which the former have either their passions or their pecuniary interests concerned all on one side, is to apply an excellent maxim to a very bad use.

“If indeed the maxim were applicable to matters of public revenue, if to allow the Executive Government of a country to assess its revenue uncontrolled by Courts of law really be to make a man judge in his own cause, then the maxim certainly is not a fundamental principle of all law. I have instanced the case of income tax. I might instance others, and I have shown that in India the assessment of land-revenue has always been and must be discretionary with the Ruler so long as it remains variable. And so far from its being true that as regards matters of public revenue the Legislature has been constantly affirming the maxim in question, I hold in my hand another petition in which it is made a subject of remark and complaint that exactly the opposite course has been taken by Government. I read from the petition of the Ahmedábád Association the following sentence:—

“‘Your Excellency’s petitioners would conclude their prayer with the remark that this Bill is a continuation of a series of legislative enactments which, beginning with the Huk Act of 1839, and including in its range the Inám Summary Settlement and other Acts, ended with the Pension Act of 1871, and which has had for its object the gradual abridgment of the power of the Civil Court in matters of revenue and the extension *pro tanto* of the powers of the executive officers.’

“The list given is not quite correct, for some of the enactments referred have nothing to do with the point; but doubtless the extreme and manifold public inconveniences flowing from the unskilful frame of the Regulation I have been explaining to the Council have cropped up from time to time, and have been met by various enactments of which I hope this will be the last.

“I will only advert to one other topic. The objectors to the Bill say that the time has come for extending to the new provinces of Bombay the benefits of the law that applies to the old ones. At present there is a sharp territorial division, the old provinces being subject to the unbounded jurisdiction of the Civil Courts the effect of which I have been describing, while in the remaining parts the jurisdiction of the Civil Courts in revenue matters is totally excluded in the terms used by the Bill as it was introduced. We have now modified the Bill so as to preserve the jurisdiction of Civil Courts over a larger legal area; we propose to give the same law to the whole Presidency, and that will extend the jurisdiction of the Civil Courts into the new provinces where now they have none. So far the views of the petitioners are met by the alterations made in the Bill: but then the new jurisdiction given will be of reasonable instead of unreasonable extent.

"I think that the foregoing remarks will have made it clear that the present wide and vague jurisdiction of the Civil Courts must be in some way curtailed, and that the only question is where to draw the line. The Committee have set themselves to consider solely what matters it is most for the public interest to keep in the hands of Revenue authorities, and what to leave to ordinary litigation. When that dividing-line is drawn to the satisfaction of the Legislature, there appears to be no reason now existing why it should not apply to the whole Presidency."

His Excellency THE COMMANDER-IN-CHIEF said that a few remarks suggested themselves with regard to the Bill. Of course from his long residence in India he must be fully sensible of the absolute necessity for the unfettered power of the Executive in all matters relating to revenue. He should like information as to the particular points which were to be transferred to the jurisdiction of the Civil Courts in the new provinces. It seemed to him that the extension of the jurisdiction of the Civil Courts in revenue matters might entail upon all those concerned in litigation the transfer of their business to great distances. Perhaps Mr. Hope would describe some of the cases that would be transferred to the Civil Courts in the new provinces.

The Hon'ble MR. HOBHOUSE remarked that in page 3 of the draft Bill a proviso would be seen under heads (h), (i), (j) and (k), followed by some illustrations of cases, which would not fall within the Civil Courts.

The Hon'ble SIR WILLIAM MUIR said that, as he understood him, His Excellency the Commander-in-Chief wished to know how far the proposed Bill effected a change in the present law, and to what extent suits, which were now triable in the Revenue Courts, would be transferred to the Civil Courts.

His Excellency THE COMMANDER-IN-CHIEF observed that the question naturally arose from the remarks of Mr. Hope to the effect that the new provinces had gone on and prospered extremely well without the shadow of the Courts.

His Excellency THE PRESIDENT said:—"I think that the question asked by His Excellency the Commander-in-Chief is answered by a reference to the proviso attached to section 4 of the Bill. It may be found advisable after the Bill has been published, and when we come to discuss it again, to take into consideration the objections which His Excellency has raised.

"With regard to the general scope and object of the measure, I wish to say that it has been for a considerable time under the anxious consideration of the Executive Government. It is a subject not without difficulties, and upon which the Government of India have had a lengthened correspondence with the Government of Bombay.

"The Government of India believe that the main provisions now contained in the Bill are just, and, moreover, that they are necessary for the purpose of avoiding the doubts and difficulties which the present state of the law involves in regard to the assessment and collection of the land-revenue in the Presidency of Bombay.

"Mr. Hope's review of the history of the relation of the Civil Courts to questions connected with the land-revenue in different parts of India was very interesting, and he has also expressed his opinions upon the relative functions of judicial tribunals and of the Executive Government in these and similar cases.

"I do not desire to enter now upon the discussion of so large a question as that, but I wish to express my entire concurrence in the statement which has been made by Mr. Hobhouse of the present condition of the law, as we understand it, in the Bombay Presidency, and of the reasons which have influenced the Government of India in deciding to recommend the limitation of the powers of the Civil Courts contained in this Bill to the consideration of the Legislative Council.



“The Motion which I have to put to the Council is that the Bill, together with the Report of the Select Committee, shall be published in the *Gazette of India* in English, and in the Bombay Presidency in English and in such other languages as the Local Government thinks fit.

“It is possible that when the Bill has been thus published points may arise which we have not yet taken into consideration. I am satisfied that, as has hitherto been the case, the Council will give every consideration to any suggestions that may be made by persons conversant with the somewhat complicated matters of detail treated in the Bill, and that, if necessary, such modifications will be made in its provisions as, upon consideration, may be found to be expedient.

“Mr. Hobhouse has shown in his speech to-day that the Government have not neglected to consider the objections which were raised to the Bill in its first shape, and that considerable modifications have been made in consequence; but, at the same time, it appears to me that the main principle of the Bill cannot be abandoned, and that it is necessary that it should be passed into law without any essential alteration.”

The Motion was put and agreed to.

The following Select Committee was named :—

On the Bill for the repeal of certain obsolete enactments—The Hon'ble Sir A. J. Arbuthnot, the Hon'ble Messrs. Dalrymple and Hope and the Mover.

The Council then adjourned *sine die*.

SIMLA;  
The 13th October 1875. }

WHITLEY STOKES,  
Secretary to the Government of India,  
Legislative Department.



# The Gazette of India,

## EXTRAORDINARY.

Published by Authority.

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SIMLA, THURSDAY, OCTOBER 28, 1875.

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### MILITARY DEPARTMENT.

#### NOTIFICATION.

*Simla, the 28th October 1875.*

WITH the concurrence of His Excellency the Viceroy and Governor General of India, the Hon'ble the President in Council is pleased to direct that, on receipt of information by telegraph of the landing of His Royal Highness the Prince of Wales at Bombay, a Royal Salute shall be fired at every Fort or Cantonment in British India where salutes are authorized to be fired.

His Royal Highness is expected to arrive on the 8th November.

By Order of the Hon'ble the President in Council,

H. K. BURNE, *Colonel,*  
*Secretary to the Government of India.*





# The Gazette of India, EXTRAORDINARY.

Published by Authority.

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CALCUTTA, TUESDAY, NOVEMBER 23, 1875. { Register  
No. 75.

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## FOREIGN DEPARTMENT.

### NOTIFICATION.

#### POLITICAL.

No. 3109 P.

*Fort William, the 23rd November 1875.*

The following Notification which appeared in the *Bombay Gazette Extraordinary* is re-published for general information :—

### NOTIFICATION.

#### POLITICAL DEPARTMENT.

*Bombay Castle, 16th November 1875.*

HIS ROYAL HIGHNESS THE PRINCE OF WALES arrived at Bombay at 9 A. M. on the 8th instant, in Her Majesty's Steam-Ship *Serapis*.

2. On the *Serapis* entering the Harbour a Royal Salute was fired by the Ships of War under the command of His Excellency the Naval Commander-in-Chief and by the Saluting Battery.

3. At 10 A. M. HIS EXCELLENCY the Commander-in-Chief of Her Majesty's Naval Forces in India and Rear-Admiral Lambert, C.B., proceeded on board Her Majesty's Steam-Ship *Serapis*.

4. At 3 P. M. HIS EXCELLENCY THE VICEROY AND GOVERNOR GENERAL, attended by his suite, arrived at the Dockyard and proceeded on board Her Majesty's Ship *Serapis*. HIS EXCELLENCY was received at the Dockyard by a Guard of Honor; and on his embarkation Royal Salutes were fired from the Saluting Battery and by Her Majesty's Ships of War. While on board the *Serapis*, HIS EXCELLENCY THE VICEROY presented the Foreign Secretary to the Government of India and the members of his own Personal Staff to HIS ROYAL HIGHNESS THE PRINCE OF WALES.

5. At 3-25 P. M. His Excellency the Governor of Bombay, attended by his staff and conducted by the Superintendent of the Bombay Marine, proceeded on board Her Majesty's Steam-Ship *Serapis* under the usual salute from the Saluting Battery, and was presented to HIS ROYAL HIGHNESS by HIS EXCELLENCY THE VICEROY. His Excellency was accompanied on board by the Chief Justice, His Excellency the Commander-in-Chief, the Members of Council, and the Officer Commanding the Troops in Bombay, who were presented to HIS ROYAL HIGHNESS by His Excellency the Governor of Bombay.

6. At 3-45 P. M. the Governor of Bombay and staff and the Officers who accompanied His Excellency returned to the Dockyard.

7. At 4 P. M. HIS ROYAL HIGHNESS THE PRINCE OF WALES, accompanied by HIS EXCELLENCY THE VICEROY, and attended by his suite, quitted Her Majesty's Ship *Serapis* in the Royal Barge under a Royal Salute from Her Majesty's Ships of War.

8. HIS ROYAL HIGHNESS landed under a Salute of 21 guns from the Saluting Battery, and a Guard of Honor of European Infantry was drawn up opposite the landing place.

9. HIS ROYAL HIGHNESS was received on landing by His Excellency the Governor of Bombay, the Chief Justice, His Excellency the Commander-in-Chief, the Roman Catholic Bishop, the Members of Council, the Judges of the High Court of Judicature at Bombay, the Additional Members of Council, the Commissioner in Sind, the Commissioner of Customs and Opium, the Revenue Commissioners, the Secretaries and Under-Secretaries to Government, the Chairman of the Corporation of Bombay, the Chairman of the Bench of Justices, the Municipal Commissioner, and the Sheriff of Bombay.

10. The Native Princes, Chiefs and Sirdars, assembled in Bombay in honor of HIS ROYAL HIGHNESS, attended on the occasion.

11. Immediately after landing at the Dockyard, HIS ROYAL HIGHNESS THE PRINCE OF WALES received from the Municipal Corporation of the City of Bombay the following address:—

MAY IT PLEASE YOUR ROYAL HIGHNESS,—We, the Chairman and Members of the Municipal Corporation of Bombay, esteem it a high privilege to be allowed, in the name of the Corporation and of all the inhabitants of this city, to greet your ROYAL HIGHNESS, at your landing on the shore of India, with an address of loyal welcome. We rejoice that your ROYAL HIGHNESS should have selected Bombay as the starting point of your Indian travels; for this city is in itself perhaps the most striking example India can present of the beneficial results that may be produced by the impact of western civilization on oriental character and institutions, and of the success that may attend earnest and judicious efforts to reconcile all the various races of this country to British rule.

Bombay may lay claim to the distinction of being a Royal City, for this Island first became an appanage of the Crown of England through forming part of the dowry of Charles the Second's Portuguese bride; and during the two centuries that have since elapsed, Bombay has had every reason to be grateful for this fortunate change in her destiny. From a barren rock, whose only wealth consisted in cocoanuts and dried fish, whose scanty population of 10,000 souls paid a total revenue to the State of not more than £6,000 a year, whose trade was of less value than that of Tanna and Bassein, and whose climate was so deadly to Europeans that two monsoons were said to be the life of a man, she has blossomed into a fair and wholesome city, with a population which makes her rank next to London among the cities of the British Empire, with a municipal revenue amounting to £300,000 a year, and with a foreign commerce worth forty-five millions and yielding in customs duties to the Imperial Treasury three millions a year. All this material prosperity she owes to the strong and wise Government which has secured her in the enjoyment of peace and order, of equality before the law, of religious liberty, and of freedom of trade, and has thus given confidence to men of all races and creeds—Europeans, Indo-Portuguese, Hindoos, Mahomedans, Parsees, and Jews—to pursue their various callings under the shadow of the British flag.

We gladly, therefore, seize the occasion of your ROYAL HIGHNESS' presence amongst us to record our sense of the blessings of British rule, and to assure your ROYAL HIGHNESS of our devotion to that Throne which has become the enduring symbol of concord, liberty, prosperity, and progress to all



the multitude of nations that own the benign sway of QUEEN VICTORIA. We beg that your ROYAL HIGHNESS will convey to Her most Gracious Majesty the expression of our loyal sentiments, and of our gratification that Her Majesty has sent the Heir to the Crown amongst us to become personally acquainted with the people of India.

We regret that YOUR ROYAL HIGHNESS' consort, the PRINCESS OF WALES, so much and so deservedly beloved by the English people, has not been able to accompany YOUR ROYAL HIGHNESS on this journey, to learn for herself in what honor her name is held in India. We pray that the God of all nations may watch over YOUR ROYAL HIGHNESS, and bring your happy design of visiting India, of which we to-day witness the auspicious commencement, to as happy a conclusion, so that it may be blest with good fruit hereafter in the strengthening of the ties of mutual interest, esteem, and good-will, which already bind the Imperial States of Great Britain to its greatest dependency.

HIS ROYAL HIGHNESS replied as follows :—" I thank you most sincerely for your kind address, and I shall not fail to communicate to Her Majesty the Queen my sense of the loyalty to her Crown and person which is expressed, not only in your dutiful expressions of welcome, but in all I see around me on first landing in your beautiful Island. It is a great pleasure to me to begin my travels in India at a place so long associated with the Royal Family of England, and to find that during so many generations of British rule this great port has steadily prospered. Your natural advantages would have ensured a large amount of commerce under any strong Government, but in your various and industrious population I gladly recognise the traces of a rule which gives shelter to all who obey the laws, which recognises no invidious distinctions of race, which affords to all perfect liberty in matters of religious opinion and belief, and freedom in the pursuit of trade and of all lawful callings. I note with satisfaction the assurance I derive from your address that under British rule men of varied creeds and nations live in harmony among themselves, and develop to the utmost those energies which they inherit from widely separate families of mankind, whilst all join in loyal attachment to the British Crown and take their share, as in my native country, in the management of their own local affairs. I shall gladly communicate to Her Majesty what you so loyally and kindly say regarding the pleasure which the people of India derive from Her Majesty's gracious permission to me to visit this part of Her Majesty's Empire. I assure you that the PRINCESS OF WALES has never ceased to share my regret that she was unable to accompany me. She has from her very earliest years taken the most lively interest in this great country, and the cordiality of your greeting this day will make her yet more regret the impossibility of her sharing in person the pleasure your welcome afforded me. Gentlemen, I heartily thank you for your good wishes for my health and for a prosperous return from my journey. I fervently trust that the same good Providence which has prospered the rule of the British nation in India heretofore may yet further bless our efforts for the peace and good government of all parts of Her Majesty's dominion."

12. After HIS ROYAL HIGHNESS had replied to the address of the Municipal Corporation of the City of Bombay, the Principal Native Chiefs assembled in the Dockyard were presented to him by HIS EXCELLENCY THE VICEROY AND GOVERNOR-GENERAL.

13. The Procession described below was then formed in the Dockyard, and proceeded thence to Government House, Parel.

#### PROCESSION.

(On Horseback.)

The Assistant Quarter-master General, Bombay District.  
The Deputy Assistant Quarter-master General, Bombay District.

A Squadron of the 3rd Hussars in column of Fours headed by the Band of the Regiment.

A Battery of Royal Horse Artillery in column of route.

A Squadron of Poona Horse in column of Fours.

The Officer Commanding Poona Horse.

The Brigade-Major.

Brigadier-General Phayre, C.B.,  
Aide-de-Camp to the Queen.

A Detachment of His Excellency the Governor's Body Guard.

The Officer Commanding 1st Bombay Lancers.

A Staff Officer.

Brigadier-General Gell, Commanding  
Bombay District.

*Carriages of His Excellency the Governor of Bombay.*

1. Captain Spencer, Aide-de-Camp to His Excellency the Governor of Bombay.  
Captain Anderson, Aide-de-Camp to His Excellency the Governor of Bombay.  
Captain Grey, Aide-de-Camp to His Excellency the Governor of Bombay.  
Jemadar Shaik Cassim, Aide-de-Camp to His Excellency the Governor of Bombay.
  2. C. S. Close, Esq., Surgeon to His Excellency the Governor of Bombay.  
Lieutenant MacIlwaine, R. N., Aide-de-Camp to His Excellency the Governor of Bombay.  
Captain Daniel, Aide-de-Camp to His Excellency the Governor of Bombay.  
Captain Makellar, Aide-de-Camp to His Excellency the Governor of Bombay.
  3. E. R. Wodehouse, Esq., Private Secretary to His Excellency the Governor of Bombay.  
Captain Jervoise, Military Secretary to the Governor of Bombay.  
Captain Wodehouse, Aide-de-Camp to His Excellency the Governor of Bombay.  
Lord Hastings.
  4. His Excellency the Governor of Bombay.  
Sir Bartle Frere, G.C.S.I., K.C.B.  
Captain Fawkes, Aide-de-Camp to His Excellency the Governor of Bombay.  
Lord Ebrington.
- A Detachment of His Excellency the Governor's Body Guard.

*Carriages of His Royal Highness the Prince of Wales.*

1. Major Williams, Special Duty with HIS ROYAL HIGHNESS THE PRINCE OF WALES.  
Mr. Albert Grey, Private Secretary to the Right Honorable Sir Bartle Frere.  
Mr. W. H. Russell, Honorary Private Secretary to HIS ROYAL HIGHNESS THE PRINCE OF WALES.  
Mr. Sydney Hall, Artist in the suite of HIS ROYAL HIGHNESS THE PRINCE OF WALES.
2. The Reverend Canon Duckworth, Chaplain to HER MAJESTY the QUEEN and to HIS ROYAL HIGHNESS THE PRINCE OF WALES.  
Major Sartorius, V.C., C.M.G., special duty with HIS ROYAL HIGHNESS THE PRINCE OF WALES.  
Lieutenant Augustus Fitz-George, Rifle Brigade, Extra Aide-de-Camp to HIS ROYAL HIGHNESS THE PRINCE OF WALES.
3. Colonel Owen Williams, Commanding Royal Regiment of Horse Guards.



- Captain the Lord Carington, Royal Horse Guards, Aide-de-Camp to HIS ROYAL HIGHNESS THE PRINCE OF WALES.  
 Lieutenant the Lord Charles Beresford, M.P., Royal Navy, Aide-de-Camp to HIS ROYAL HIGHNESS THE PRINCE OF WALES.
4. Surgeon General Fayrer, C.S.I., Honorary Physician to the Queen and Physician to HIS ROYAL HIGHNESS THE PRINCE OF WALES.  
 Major Henderson, special duty with HIS ROYAL HIGHNESS THE PRINCE OF WALES.  
 Major Bradford, special duty with HIS ROYAL HIGHNESS THE PRINCE OF WALES.
5. Major-General the Lord Alfred Paget, Clerk Marshal to Her Majesty the Queen.  
 Lieutenant Colonel Arthur Ellis, Grenadier Guards, Equerry in Waiting to HIS ROYAL HIGHNESS THE PRINCE OF WALES.  
 The Earl of Aylesford.  
 Mr. Francis Knollys, Private Secretary to HIS ROYAL HIGHNESS THE PRINCE OF WALES.
6. His Grace the Duke of Sutherland, K.G.  
 The Lord Suffield, Lord in Waiting and Head of the Household of HIS ROYAL HIGHNESS THE PRINCE OF WALES.  
 General S. Browne, C.B., V.C., special duty with HIS ROYAL HIGHNESS THE PRINCE OF WALES.

*Carriages of His Excellency the Viceroy and Governor-General.*

1. Lieutenant Cavendish, R. N., Flag Lieutenant of His Excellency the Commander-in-Chief of Her Majesty's Naval Forces in India.  
 Lieutenant Foley, R. N., Flag Lieutenant of the Rear-Admiral Second in Command.  
 Captain Farmer, Aide-de-Camp to His Excellency the Viceroy.  
 Lord Keane.
2. The Rear-Admiral Second in Command.  
 Captain Evelyn Baring, Private Secretary to His Excellency the Viceroy.  
 Captain Jackson, Aide-de-Camp to His Excellency the Viceroy.  
 The Honorable F. Baring, Aide-de-Camp to His Excellency the Viceroy.
3. His Excellency the Commander-in-Chief of Her Majesty's Naval Forces in India.  
 C. U. Aitchison, Esq., C.S.I., Secretary to the Government of India.  
 Colonel Earle, Military Secretary to His Excellency the Viceroy.  
 Captain Biddulph, Aide-de-Camp to His Excellency the Viceroy.
- A Detachment of His Excellency the Viceroy's Body Guard.
- |  |   |  |   |   |   |  |
|--|---|--|---|---|---|--|
| The Adjutant of the Viceroy's Body Guard (on horseback). | { | HIS EXCELLENCY THE VICEROY AND GOVERNOR-GENERAL. | { | HIS ROYAL HIGHNESS THE PRINCE OF WALES. | } | The Commandant of the Viceroy's Body Guard (on horseback). |
|  |   | The Equerry in attendance on His Royal Highness. |   |   |   |  |
- The Commissioner of Police (on horseback).  
 A Detachment of His Excellency the Viceroy's Body Guard.

*Carriages of Native Princes invited to take part in the Procession.*

The Deputation from His Highness the Nizam.  
 His Highness Syajee Rao, Gaekwar of Baroda.  
 His Highness the Maharaja of Mysore.  
 His Highness the Maharana of Meywar (Oodeypur).

His Highness Siwajee Chutraputtee Maharaj, Raja of Kolhapur.  
 His Highness Maharao Shree Mirza Rajay Pragmuljee, G.C.S.I., Rao of Cutch.  
 His Highness Kesrusingjee Jewunsingjee, Maharaja of Edar.  
 His Highness Meer Ali Morad of Khairpur.  
 His Highness Mohubut Khanjee, K.C.S.I., Nawab of Junagarh.  
 His Highness Jam Shree Vibbajee, Jam of Nawanagar.  
 His Highness Rawul Shree Tukhutsingjee, Thakor Saheb of Bhau-nagar.  
 His Highness Raj Shree Mansingjee, Raj Saheb of Dhrangadra.  
 Gumbheersingjee, Raja of Rajpipla.  
 His Excellency Zorawur Khan, Dewan of Pahlampur.  
 Bismilla Khan, Nawab of Radhanpur.

*Carriages of other Officers and Gentlemen taking part in the Procession.*

The Chief Justice of Bombay.  
 His Excellency the Commander-in-Chief.  
 The Roman Catholic Bishop.  
 The Honorable A. Rogers, } Members of Council.  
 The Honorable J. Gibbs. }  
 The Honorable Sir Charles Sargent.  
 The Honorable Mr. Justice Bayley.  
 The Honorable Mr. Justice Kemball.  
 The Honorable Mr. Justice Green.  
 The Honorable Mr. Justice West.  
 The Honorable Mr. Justice Nanabhai Haridas.  
 The Honorable A. R. Scoble.  
 The Honorable Major-General Kennedy.  
 The Honorable Colonel W. C. Anderson.  
 The Honorable E. W. Ravenscroft.  
 The Honorable Rao Saheb W. N. Mundlick.  
 The Honorable Rao Saheb Becherdass Ambaidass.  
 The Honorable Nacoda Mahomed Ali Rogay.  
 The Honorable Khan Bahadoor Padamjee Pestonjee.  
 The Honorable Donald Graham.  
 The Officers Commanding Her Majesty's Ships on the East Indian Station and Her Majesty's Ships of the Detached Squadron.  
 The Chairman of the Municipal Corporation.  
 The Municipal Commissioner.  
 The Sheriff of Bombay.

A Squadron of the 1st Bombay Lancers in Column of Fours.

On arrival at Government House, Parell, His ROYAL HIGHNESS THE PRINCE OF WALES was received by His Excellency the Governor of Bombay.

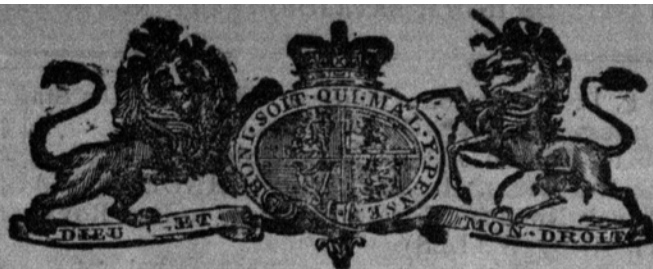
Shortly afterwards His ROYAL HIGHNESS paid a visit to His Excellency the Viceroy and Governor-General.

By order of His Excellency the Viceroy and Governor General.

C. U. AITCHISON,

*Secy. to the Govt. of India.*





# The Gazette of India, EXTRAORDINARY.

Published by Authority.

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CALCUTTA, TUESDAY, NOVEMBER 23, 1875. { Register  
No. 75.

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## FOREIGN DEPARTMENT.

### NOTIFICATION.

#### POLITICAL.

No. 3108 P.

*Fort William, the 23rd November 1875.*

The following reports of the movements of HIS ROYAL HIGHNESS THE PRINCE OF WALES are published for general information:—

*Monday, November 8, 1875.*—HIS ROYAL HIGHNESS THE PRINCE OF WALES arrived at Bombay on board Her Majesty's Steam-Ship *Serapis* at 9 o'clock A.M.

In the course of the forenoon His Excellency the Commander-in-Chief of Her Majesty's Naval Forces in India (Rear-Admiral Macdonald) and the Admiral Second in Command (Rear-Admiral Lambert, C.B.) were received by HIS ROYAL HIGHNESS.

At 3 P. M. His Excellency the Viceroy and Governor-General proceeded on board the *Serapis* and was shortly afterwards followed by His Excellency the Governor of Bombay. The Chief Justice, His Excellency the Commander-in-Chief of Bombay, and the Members of Council likewise went on board the *Serapis* and were presented to HIS ROYAL HIGHNESS by His Excellency the Governor of Bombay. At 4 o'clock the PRINCE OF WALES, accompanied by the Viceroy and attended by the Members of HIS ROYAL HIGHNESS' suite, landed at the Dockyard and drove through the streets of Bombay to Government House, Parell, where HIS ROYAL HIGHNESS was received by His Excellency the Governor.

His Excellency gave a dinner in the evening in honor of the PRINCE OF WALES at which His Excellency the Viceroy was present.

After dinner HIS ROYAL HIGHNESS held a Reception, which was attended by Chiefs and Native Gentlemen.

HIS ROYAL HIGHNESS' suite consisted of—

1. His Grace the Duke of Sutherland, K.G.
2. The Right Honorable Sir Bartle Frere, G.C.S.I., K.C.B.
3. The Lord Suffield (Lord in Waiting and Head of the Household of HIS ROYAL HIGHNESS THE PRINCE OF WALES).
4. Major-General the Lord Alfred Paget (Clerk Marshal to Her Majesty the Queen).
5. The Earl of Aylesford.
6. Major-General S. Browne, C.B., V.C. (on special duty with HIS ROYAL HIGHNESS THE PRINCE OF WALES).
7. Major-General Probyn, C.B., V.C. (Equerry in Waiting to HIS ROYAL HIGHNESS THE PRINCE OF WALES).

8. Major P. D. Henderson (Political Officer on the Staff of His ROYAL HIGHNESS THE PRINCE OF WALES).
9. Lieutenant-Colonel Arthur Ellis (Grenadier Guards, Equerry in Waiting to His ROYAL HIGHNESS THE PRINCE OF WALES).
10. Mr. Francis Knollys (Private Secretary to His ROYAL HIGHNESS THE PRINCE OF WALES).
11. Surgeon-General Fayrer, C.S.I., (Honorary Physician to Her Majesty the Queen and Physician to His ROYAL HIGHNESS THE PRINCE OF WALES).
12. Captain the Honorable H. Carr Glyn, C.B., Royal Navy (Aide-de-Camp to Her Majesty the Queen, Commanding Her Majesty's Ship *Serapis*).
13. Colonel Owen Williams (Commanding Royal Regiment of Horse Guards).
14. Major E. C. R. Bradford (on special duty with His ROYAL HIGHNESS THE PRINCE OF WALES).
15. Commander Durrant, Royal Navy (Commanding Royal Yacht *Osborne*).
16. Major B. Williams (on special duty with His ROYAL HIGHNESS THE PRINCE OF WALES).
17. Major R. W. Sartorius, C.M.G., V.C. (on special duty with His ROYAL HIGHNESS THE PRINCE OF WALES).
18. Lieutenant the Lord Charles Beresford, M.P., Royal Navy (Aide-de-Camp to His ROYAL HIGHNESS THE PRINCE OF WALES).
19. Captain the Lord Carington (Royal Horse Guards, Aide-de-Camp to His ROYAL HIGHNESS THE PRINCE OF WALES).
20. The Reverend Canon Duckworth (Chaplain to Her Majesty the Queen and to His ROYAL HIGHNESS THE PRINCE OF WALES).
21. Lieutenant Augustus Fitz-George (Rifle Brigade, Extra Aide-de-Camp to His ROYAL HIGHNESS THE PRINCE OF WALES).
22. Mr. W. H. Russell (Honorary Private Secretary to His ROYAL HIGHNESS THE PRINCE OF WALES).
23. Mr. Albert Grey (Private Secretary to the Right Honorable Sir Bartle Frere).
24. Mr. Sydney Hall (Artist in the suite of His ROYAL HIGHNESS THE PRINCE OF WALES).

*Tuesday, November 9, 1875.*—Between 10 A. M. and 2 P. M. His ROYAL HIGHNESS received at Government House, Parell, the visits of the following Chiefs:—

His Highness the Maharaja of Kolhápúr.  
 His Highness the Maharaja of Mysore.  
 His Highness the Maharana of Meywar.  
 His Highness the Rao of Cutch, G.C.S.I.  
 His Highness the Gaekwar of Baroda.  
 Deputation from His Highness the Nizam.  
 His Highness the Maharaja of Edar.  
 His Highness Meer Ali Morad Khan of Khairpur.  
 His Highness the Nawab of Junágarh, K.C.S.I.  
 His Highness the Jam of Nawánagar.  
 His Highness the Thakor Saheb of Bhaunagar.  
 His Highness the Raj Saheb of Dhrángadra.  
 His Highness the Raja of Rájpipla.  
 His Excellency the Dewan of Pálanpur.  
 The Nawab of Rádhanpur.  
 The Raja of Bária.  
 The Raja of Lunáwára.  
 The Nawab of Bálásinor.  
 The Raja of Chota Udepur.  
 The Raja of Sunth.  
 The Sir-Desai of Sáwant Wári.  
 The Raja of Dharampor.  
 The Nawab of Junjeera.



At 4-30 P. M. HIS ROYAL HIGHNESS and suite embarked at the Dockyard in steam barges and visited His Excellency the Commander-in-Chief of Her Majesty's Naval Forces in India and Rear-Admiral Lambert, C.B., on board their respective flag-ships.

At 6-45 P. M. HIS ROYAL HIGHNESS landed at the Mazagon Bunder, where he was met by His Excellency the Viceroy and His Excellency the Governor of Bombay. From thence, accompanied by His Excellency the Viceroy and conducted by His Excellency the Governor, HIS ROYAL HIGHNESS with suite proceeded in carriages to visit the parts of the city illuminated in honor of the anniversary of HIS ROYAL HIGHNESS' birth.

*Wednesday, November 10, 1875.*—The following Minor Chiefs of Kattywar, the Sirdars of the Deccan and Konkan, and the Southern Mahratta Sirdars were received by HIS ROYAL HIGHNESS at noon :—

The Thakor Saheb of Morvi.  
 The Thakor Saheb of Wánkánér.  
 The Thakor Saheb of Pálitána.  
 The Thakor Saheb of Dhrol.  
 The Thakor Saheb of Limri.  
 The Thakor Saheb of Rájkot.  
 The Thakor Saheb of Wadhván.  
 The Swamee of Chaphal.  
 The Pant Prithinidi of Aundh.  
 The Pant Sucheo of Bhor.  
 The Chief of Phaltan.  
 The Chief of Vinchur, C.S.I.  
 The Raja of Jawhár.  
 The Raja of Mudhol.  
 The Chief of Sàngli.  
 The Chief of Miraj.  
 The Chief of the Junior Branch of Miraj.  
 The Chief of Jamkhandi.  
 The elder and two younger Chiefs of Kurandwád.  
 The Junior Chief of Sàngli.  
 The Chief of Rámdurg.

At 4 P. M. HIS ROYAL HIGHNESS held a Levée at the new Secretariat Buildings.

At 5-15 P. M. HIS ROYAL HIGHNESS, accompanied by His Excellency the Governor of Bombay, attended the Children's Fête on the Esplanade, and then proceeded in carriages, attended by his suite, to return in succession the visits of His Highness the Maharaja of Kolhápúr, His Highness the Maharana of Oodeypore, and His Highness the Gaekwar of Baroda.

On the conclusion of these visits, HIS ROYAL HIGHNESS returned to Government House, Parell, and after dinner attended a Ball given by the members of the Byculla Club to the Officers of Her Majesty's Ships lying in Bombay Harbour.

*Thursday, November 11, 1875.*—At 1-30 P. M. HIS ROYAL HIGHNESS, accompanied by His Excellency the Governor of Bombay and attended by his suite, drove to the University Senate Hall, where an address was presented by the University of Bombay.

Commencing at 3 P. M. HIS ROYAL HIGHNESS returned the visits of the following Chiefs :—

His Highness the Maharaja of Edar.  
 His Highness Meer Ali Morad Khan of Khairpur.  
 His Highness the Nawab of Junágarh, K.C.S.I.  
 His Highness the Jam of Nawánagar.  
 His Highness the Thakor Saheb of Bhaunagar.  
 His Highness the Raj Saheb of Dhrángadra.  
 His Highness the Raja of Rájpipla.  
 His Excellency the Dewan of Pálanpur.  
 The Nawab of Rádhanpur.

On the conclusion of the visit to the Chief last mentioned, HIS ROYAL HIGHNESS laid the first stone of the Elphinstone Dock with Masonic Honors.

At 6-15 p. m. HIS ROYAL HIGHNESS returned the visits of His Excellency Sir Salar Jung, G.C.S.I., His Highness the Maharaja of Mysore, and His Highness the Rao of Cutch.

In the evening a reception of the Native Chiefs and Sirdars present in Bombay was held at Government House, Parell.

*Friday, November 12, 1875.*—THE PRINCE OF WALES, accompanied by the Governor of Bombay and attended by his suite, embarked from the Dockyard on board the *May Frere* and proceeded to the Island of Elephanta, where an entertainment was given by His Excellency in His ROYAL HIGHNESS' honor. The Prince returned to Mazagon Bunder after dinner, the *May Frere* passing first among the vessels of the Mercantile Marine lying in Bombay Harbour, and then through the lines of the Squadron of Her Majesty's Ships of War assembled in honor of HIS ROYAL HIGHNESS' visit to India. All the vessels were brilliantly illuminated for the occasion.

*Saturday, November 13, 1875.*—At 11 a. m. HIS ROYAL HIGHNESS the PRINCE OF WALES, accompanied by His Excellency the Governor of Bombay, left for Poona. On the arrival of HIS ROYAL HIGHNESS an address of welcome was presented by the Municipality. His Excellency the Governor gave a dinner in honor of the PRINCE OF WALES, and afterwards held a Reception.

*Sunday, November 14, 1875.*—HIS ROYAL HIGHNESS THE PRINCE OF WALES and His Excellency the Governor of Bombay attended Divine Service at Government House.

In the afternoon HIS ROYAL HIGHNESS and His Excellency the Governor called on the Commander-in-Chief of Her Majesty's Forces in Bombay.

*Monday, November 15, 1875.*—HIS ROYAL HIGHNESS THE PRINCE OF WALES visited the village and temples of Parbuttee. In the afternoon HIS ROYAL HIGHNESS drove through the old town, and attended a review of the troops. After dusk HIS ROYAL HIGHNESS with His Excellency the Governor drove through the illuminated parts of the city and afterwards dined with His Excellency the Commander-in-Chief of Her Majesty's Forces in Bombay. After dinner HIS ROYAL HIGHNESS left by train for Bombay.

*Tuesday, November 16, 1875.*—HIS ROYAL HIGHNESS THE PRINCE OF WALES returned to Bombay from Poona at 7 a. m. After receiving His Highness Aga Khan, HIS ROYAL HIGHNESS attended a review of the troops in the garrison, and presented colors to the Marine Battalion in the afternoon.

In the evening His Excellency the Governor gave a State Ball, at which HIS ROYAL HIGHNESS was present.

*Wednesday, November 17, 1875.*—HIS ROYAL HIGHNESS THE PRINCE OF WALES drove out in the afternoon and visited various public institutions. HIS ROYAL HIGHNESS then returned to the *Serapis*, and entertained at dinner on board Their Excellencies the Governor of Bombay and the Commander-in-Chief of Her Majesty's Forces in Bombay and a number of gentlemen.

*Thursday, November 18, 1875.*—HIS ROYAL HIGHNESS THE PRINCE OF WALES visited Lady Sassoon, His Highness Aga Khan, and Sir Jamsetjee Jeejeebhoy, returning to the *Serapis*. At 8-30 p. m. HIS ROYAL HIGHNESS left by train for Baroda.

By order of His Excellency the Viceroy and Governor General.

C. U. AITCHISON,  
Secy. to the Govt. of India.





# The Gazette of India, EXTRAORDINARY.

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CALCUTTA, TUESDAY, NOVEMBER 30, 1875. { Register  
No. 75.

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## FOREIGN DEPARTMENT.

### NOTIFICATION.

#### POLITICAL.

No. 3141 P.

*Fort William, the 30th November 1875.*

The following reports of the movements of HIS ROYAL HIGHNESS THE PRINCE OF WALES are published for general information :—

*Friday, November 19, 1875.*—HIS ROYAL HIGHNESS THE PRINCE OF WALES arrived at Baroda and was met by His Highness the Gaekwar and conducted in an Elephant Procession to the Residency, where HIS ROYAL HIGHNESS received His Highness the Gaekwar.

HIS ROYAL HIGHNESS subsequently returned the visit of His Highness the Gaekwar, and then visited Her Highness the Maharanee Jumnabae.

After viewing some native sports, HIS ROYAL HIGHNESS dined with the Officers of the 9th Regiment Native Infantry.

*Saturday, November 20, 1875.*—HIS ROYAL HIGHNESS THE PRINCE OF WALES left Baroda at 6 A. M. for Mackarpara, where HIS ROYAL HIGHNESS witnessed Cheeta-hunting and other field sports.

HIS ROYAL HIGHNESS returned to the Residency at 7 P. M., and dined with the Officers of the 22nd Regiment Native Infantry.

*Sunday, November 21, 1875.*—HIS ROYAL HIGHNESS THE PRINCE OF WALES attended Divine Service at the Residency, in the forenoon.

After dinner, which was given in HIS ROYAL HIGHNESS' honor, by Her Highness the Maharanee Jumnabae, at the Moteebagh, HIS ROYAL HIGHNESS left by special train for Mehmoodabad.

*Monday, November 22, 1875.*—HIS ROYAL HIGHNESS THE PRINCE OF WALES shot in the neighbourhood of Mehmoodabad, in the forenoon, and left by special train for Baroda at 2 P. M.

After luncheon, HIS ROYAL HIGHNESS drove to Dabka.

*Tuesday, November 23, 1875.*—HIS ROYAL HIGHNESS THE PRINCE OF WALES went out pig-sticking at day-break, and afterwards drove back to Baroda.

After dinner, HIS ROYAL HIGHNESS received deputations from Ahmedabad, Surat, and Broach.

HIS ROYAL HIGHNESS and suite left Baroda for Bombay by special train at 9-30 P. M.

*Wednesday, November 24, 1875.*—HIS ROYAL HIGHNESS THE PRINCE OF WALES arrived at Bombay at 8-30 A. M., and was received with the usual honors by His Excellency the Governor.

HIS ROYAL HIGHNESS drove to the dock-yard, was met by His Excellency the Commander-in-Chief of Her Majesty's Naval Forces in India, and embarked for the *Serapis* under a salute from Her Majesty's Ships of War.

HIS ROYAL HIGHNESS entertained a small party at dinner.

*Thursday, November 25, 1875.*—HIS ROYAL HIGHNESS THE PRINCE OF WALES embarked at 5 P. M., and the *Serapis* left at 5-30 P. M. for Goa and thence to Beypoor.

By order of the Viceroy and Governor General,

F. HENVEY,  
for Secy. to the Govt. of India.





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CALCUTTA, FRIDAY, DECEMBER 10, 1875.

{ Register  
No. 75.

## PUBLIC WORKS DEPARTMENT.

### NOTIFICATION.

#### TELEGRAPH.

No. 508.

Fort William, the 7th December 1875.

Her Majesty's Secretary of State for India having decided that the provisions of the St. Petersburg Convention shall be brought into effect for Foreign Telegrams to and from India on the 1st January 1876, the Hon'ble the President in Council is pleased to direct the publication of the following Rules, which will come into effect on the date mentioned:—

*Rules for Foreign Messages (from 1st January 1876).*

#### GENERAL.

**RULE 1.**—Messages to Europe, Asia or Africa are accepted subject to the regulations of the International Telegraph Convention. Messages to America are accepted subject to the same conditions as far as regards their transit to the European termini of the cables.

Foreign messages are accepted for transmission under these rules at all such Telegraph stations of the following Railway Companies *at which no Government Telegraph office exists*:—

Great Indian Peninsula. East Indian, South Indian, Eastern Bengal, and the following stations of the Madras Railway—

Arconum, Cuddapa, Gooty, Raichoor, Jolarapet, Palghat, Bey pore, Coimbatore, Salem.

**RULE 2.**—The Government of India accepts no responsibility whatsoever in respect of foreign telegrams.

ART. 3.

#### ACCEPTANCE OF MESSAGES.

**RULE 3.**—Foreign telegrams are classified as follows:—

(1st).—*State messages*; those which emanate from the Chief of the State, Ministers, Commanders-in-Chief of land or sea forces, and Diplomatic or Consular Agents of the contracting Governments; also the replies to these messages.

ART. 5.  
Classification of  
messages.

*Messages from Consular Agents who are engaged in commerce are not considered as State messages, except when they are addressed to a Government official and relate to the Government service.*

ART. XI.

(2nd).—*Service messages*; those which emanate from the Telegraph Departments of the contracting States, and which relate either to the service of the International Telegraphs or to objects of public interest determined upon by common accord by the said Departments.

(3rd).—*Private messages.*

**RULE 4.**—Messages may be sent in any one of the languages used in the territories of the States which are parties to the International Telegraph Convention, or in

ART. VI.  
In what languages  
messages may be  
sent.  
Latin.

**RULE 5.**—Messages in ordinary language must

ART. VI.  
Ordinary messages.  
offer an intelligible sense in one of the above languages.

**RULE 6.**—The following are considered as secret messages:—

ART. VII.

Secret messages.

(1st).—Messages which contain passages of figures.

(2nd).—Messages which contain any series or groups of figures\* of which the signification is not understood by the original sending station.

(3rd).—Messages containing passages written in words of preconcerted meaning (Code), incomprehensible to the offices in correspondence, or containing words not forming part of any of the languages mentioned in Rule 4.

\* Groups of letters not forming words shall not be sent.

Messages in secret language (cipher) are liable to an extra charge for collation (see Rule 22). State messages and those in Code language are exceptions to this rule.

**RULE 7.**—State and Service messages may be sent in secret language with-

**ART. 6.** When secret messages may be accepted. Private messages in secret language may be exchanged with countries which admit that mode of correspondence.

**RULE 8.**—The text of private cipher messages

**ART. VII.** may be either entirely in cipher, or partly in cipher and partly in ordinary language; in the latter case the cipher portions must be placed between parenthesis; the cipher text must be composed exclusively of Arabic figures.

**RULE 9.**—Messages must be legibly written in characters which have their

**ART. VIII.** equivalent in the official Code of telegraph signals, and which must be written. are in use in the country where the message is presented.

The body of the message must be preceded by the *Address*; which can be written in Code or abbreviated form; but in such case the delivery of the telegram is contingent on a previous arrangement between the Addressee and the Local Telegraph Office.

The signature can similarly be in Code or abbreviated form, or may be omitted. If inserted, it should be placed after the body of the message. If not inserted, the last word of the message replaces it.

The Sender of a private message can always be called upon to prove that the signature attached to it is genuine. He has, on his side, the power of including in his message the legalization of his signature.

Every interlineation, reference, erasure or addition of words must be authenticated by the Sender of the

**ART. VIII.** message or his representative.

**RULE 10.**—The Address must contain all the information necessary to insure

**ART. X.** the delivery of the message at its destination. Such information should be written either in French or in the language of the country to which the message is addressed.

The Address of private messages should always be such that delivery can be effected without difficulty or the necessity of making enquiries.

For large towns it should comprise the name of the street and the number of the house, or, in default of these particulars, the profession of the Addressee, or some such information.

For small towns the name of the Addressee ought, if possible, to be accompanied by information sufficient to guide the Office of delivery in case of any alteration in the Addressee's name.

The name of the country in which the residence of the Addressee is situated is indispensable, unless it is a capital or important town, and even then if there are two places of importance of the same name in different countries. It is included in the number of words charged for.

Messages the addresses of which do not contain these particulars are nevertheless transmitted, but

in all cases the Sender must bear the consequences of insufficiency of address.

The Address of a message to be conveyed beyond the telegraph lines is written as in the following example:—

*M. Müller, Stiglitz, express (or post) Berlin,*

the name of the terminal telegraph station being always written last.

The Address of a message for a ship at sea

**ART. LVIII.** should contain, in addition to the ordinary directions, the name or official number of the vessel and its nationality.

**RULE 11.**—The Sender must write immediately

**ART. VIII.** before the address of his message any instructions he wishes to give relative to its delivery, acknowledgment, collation, prepaid reply, being caused "to follow," &c. Such instructions if written in abbreviated form, as under, will be counted each as one word:—

Postage prepaid (poste payée)	... PP.
Express charges prepaid (expres payée)	... XP.
Acknowledgment prepaid (accuser de réception)	... CR.
<b>ART. IX.</b> Collation prepaid (telegramme collationné)	... TC.
Reply prepaid (reponse payée)	... RP.
To follow (Faire suivre)	... FS.

When such instructions are given in unabbreviated form, they should be written either in French or in the language of the country of destination. If that language be not understood in the office of origin, the Sender is bound to annex a translation for its guidance.

**RULE 12.**—The Sender can prescribe the route

**ART. XXXVI.** he wishes his message to follow by writing the same on the message form in the place provided for the purpose. The administrations are not bound to conform to printed instructions regarding the route.

When the Sender prescribes the route to be followed, his wishes are complied with, unless the route indicated be interrupted, in which case no objection can be raised to the selection of an alternative route.

When no route is specified the message is sent by the least expensive one.

**RULE 13.**—Any Sender can, on proving his

**ART. XXXIX.** identity, stop, if in time, the Cancellation of transmission of his message.

When the Sender withdraws or stops his message before transmission has been commenced, the charges are returned to him after deducting a fixed sum of 4 annas, the fee of the original sending Station; but if transmission has commenced, the Sender has a right to a refund only of the portion of the charge belonging to the distance not traversed.

If the message has been already transmitted, the Sender's only means of cancelling it is by a paid (Service) telegram addressed to the terminal Station.

The Sender must pay also for a reply if he desires to be informed by telegraph in what manner his request has been acted upon.

A Station which receives a message, requesting the suppression of another message, previously received, informs the Original sending Station by post in what manner the request has been acted upon, unless the Sender has prepaid a reply by telegraph.



## DELIVERY OF MESSAGES.

RULE 14.—Messages may be addressed either

ART. XLI. to the place of residence of the  
How messages\* Addressee, or *poste restante* or  
may be addressed. *bureau restant* (to wait arrival).

Messages which have to be sent to their destination by post, or which are addressed *poste restante*, are immediately sent by the office of destination to the Post Office and treated as registered letters, without charge either to Sender or Addressee —(see Rule 36).

RULE 15.—A message taken to the place of

ART. XLII. residence of the Addressee may  
To whom message be delivered either to the Ad-  
may be delivered. dressee, to the adult members  
of his family, to his employés, lodgers, or guests, or to the porter of the hotel or house in which he resides, unless the Addressee has designated in writing a special person to receive it, or the Sender has instructed that the message be delivered to the Addressee only. This last demand, if made, should be mentioned in the Address of the message, and is written on the envelope by the Station of delivery.

When a message is addressed *bureau restant* (to wait arrival), it is delivered only to the Addressee himself or to a person duly appointed by him.

RULE 16.—When the message cannot be delivered,

ART. XLIII. the terminal Station, if it  
Procedure when supposes that the address is in-  
the message cannot sufficient or that it has been  
be delivered. altered in transmission, intimates the fact by a *Service* telegram to the Station of origin, which verifies the correctness of the Address, and immediately rectifies any error. *If, however, the Address be in Code, or abbreviated form, no advice of non-delivery is sent.*

RULE 17.—If, in consequence of inaccuracy or

ART. XLII. insufficiency of Address, or the  
Cost of express absence or refusal of the Ad-  
not paid by Receiver dressee, the expenses of a special  
recoverable from messenger are not paid  
Sender. on arrival, the costs incurred are specified in the advice of non-delivery or refusal and ARE RECOVERABLE FROM THE SENDER.

## CONTROL.

RULE 18.—The Government of India reserves

ART. 7. to itself the right of stopping  
Objectionable mes- any private message which  
sages. may appear dangerous to the  
security of the State, or which may be contrary to the laws of the country, to public order or decency; and any intermediate Administration

ART. XL. may stop the transmission of  
such a message on condition of immediately advising the Administration to which the original sending Station belongs.

This control is exercised by the terminal or intermediate offices subject to recourse to the central Administration, which decides without appeal.

## RECORDS.

RULE 19.—The originals and copies of messages,

ART. LXV. and the slips containing the  
Message drafts signals or similar papers, are  
how long kept. preserved for a period of eighteen months after date with all necessary precautions to ensure their secrecy.

RULE 20.—The originals or copies of messages

ART. LXVI. can only be communicated to  
Copies of messa- the Sender or to the Addressee  
ges. after proving his identity, or to the authorized attorney of either.

The Sender and Addressee, or the authorized attorney of either, have a right to be furnished with certified true copies of the messages sent or received by them. This right ceases after the expiration of 18 months from the date of the message, and is contingent on the exact date of the message to which the request refers being mentioned.

For every such copy, a fee of 4 annas per 100 words, or fraction of 100 words, is payable.

## SPECIAL MESSAGES.

RULE 21.—The Sender of a message can prepay

ART. XLV. the reply which he requests his  
Prepayment of correspondent to send. The  
reply. amount deposited for the reply  
must not exceed three times the cost of the original message.

In this case he must write between the Address and the body of the message and pay for the notice "reply paid (or Reponse payée, or RP.)—words."

When a prepaid reply is requested, the station of delivery pays to the Addressee the amount deposited for the reply, either in money, in Telegraph Stamps, or by an order for payment on the Office, leaving it to the Addressee to send his reply at any time, by any route, and to any address he chooses.

The reply, when tendered, is considered and treated as any other message.

If the original message cannot be delivered within six weeks, or if the Receiver formally refuses the amount deposited for the reply, the Station of delivery informs the Sender of it by a telegram, which indicates the cause of non-delivery and takes the place of the reply.

RULE 22.—The Sender of any message can,

ART. XLVIII. by writing the word "*Colla-*  
Collation or repe- *tionnée*" (or "TC.") immediate-  
tion of messages. ly before the Address, ensure  
its being repeated. In this case the different Offices concerned in its transmission collate it integrally (*i. e.*, it is repeated back from Office to Office to ensure its correctness). Collation is obligatory in the case of private *cipher* messages composed of figures.

The charge for collation is equal to half the charge for the message, any fraction of 2 annas being counted as 2 annas.

RULE 23.—The Sender of a message can, by

ART. XLIX. adding the words "acknow-  
Advice of delivery. ledgment paid" (or "accuser  
reception" or "CR.") im-  
mediately before the Address, ensure that a notice shall be telegraphed to him of the hour of its delivery.

If the message cannot be delivered the terminal station intimates the fact, and the reason, by a *service* telegram. (See Rule 16.) The return message paid for by the Sender is afterwards transmitted, either on delivery of the telegram, should that be found possible, or at the expiration of 24 hours in the contrary event.

The charge for an "acknowledgment" is that for a simple message of 10 words by the same route as that followed by the original message.

**RULE 24.**—The Sender of a message can by writing the words "To follow" (or "*Faire suivre*" or "FS") immediately before the Address ensure its following the Address-see to different Addresses, if necessary, *within the limits of Europe.*

When a message bears the notice "*Faire suivre*" or "To follow," the terminal Station, after presenting it at the Address given, transmits it immediately, if requisite, to any new Address supplied at the residence of the Addressee. If no new Address is supplied, the message is kept in the Office and its non-delivery reported (see rule 16). If the message is retransmitted, and the second Station cannot find the Addressee, the message is retained by that Station.

If the notice "*Faire suivre*" or "To follow" is accompanied by successive Addresses, the message is successively transmitted to each, if necessary, and the last Office treats it in accordance with the regulations of the preceding paragraph.

The charge for a message "To follow" to be levied from the Sender is simply the charge to the first terminal Station, all the Addressees entering into the number of words charged for. The supplementary charge is recovered from the Addressee.

**RULE 25.**—Any person, by explaining the necessity, can request that messages which may arrive at a Telegraph Office to be delivered to him, within the radius of delivery of that Office, be re-transmitted in conformity with the conditions of the preceding paragraphs, to the Address which he furnishes; this request must be made in writing.

ART. LIV.                      RULE 26.—Telegraphic mes-  
Multiple messages.        sages may be addressed:—

- i.—to several persons in different places;
- ii.—to several persons in the same place;
- iii.—to the same person in different places, or at several residences in the same place.

In the two first cases, each copy of the message bears only its own Address, unless the Sender requests the contrary, in which case the request must be entered after the Address, and will be charged for.

A message addressed to several persons, or to one person, in localities served by different offices, is charged for as so many separate messages.

A message addressed to several persons in the same locality, or to one person at several places of residence in the same locality (whether with or without transmission by post), is charged for as a single message; but a copying fee of 4 annas per 10 words, plus 4 annas for the excess, is charged for each destination after the first.

**RULE 27.**—In applying the preceding Rules, the facilities given to the public for prepayment of Replies or Acknowledgments, collation

of messages, messages to follow, multiple messages or messages for transmission beyond the limits of the Telegraph Lines, can be combined; subject to the conditions of Rule 11.

**RULE 28.**—The minimum charge is :—  
**ART. XV.** (a).—In ordinary messages for  
 Messages charged by a single word not exceeding  
 the words or group. 10 letters, or for a group of  
 figures not exceeding five.

(b).—In cipher messages, for a single group not exceeding 5 figures.

RULE 29.—All that the Sender writes in his message to be transmitted is included in reckoning the cost of Words charged for. except as stated in para. 8 of Rule 30 and para. 2 of Rule 34.

The translation of instructions given in a language not understood at the Office of origin (referred to in Rule 11) is not counted in the number of words charged for.

ber of words charged for.

Words not charged for.  charged for.	Words, numbers, or signs added by the Office in the in- terest of the Service are not
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**RULE 30.**—In ordinary messages the maximum length of a word is fixed at 10 letters; every 10 letters (or fraction of 10 letters) in excess is counted as a word.

Words joined by a hyphen are counted as so many separate words.

Words separated by an apostrophe are counted as so many separate words.

Proper names of towns and persons, names of places, squares, streets, &c., titles, Christian names, particles and qualifications, are counted for the number of words (not exceeding 10 letters) employed by the Sender to express them.

Combinations of words contrary to the usage of the language to which they belong are not admitted. If there be any real doubt, it should be decided in favor of the Sender.

Numbers expressed in figures are counted at the rate of five figures to a word, *plus* one word for any excess.

Every isolated character, whether letter or figure, is counted as a word. The same applies to an underline.

Signs of punctuation, hyphens, apostrophes, inverted commas, parenthesis, fresh paragraphs, are not counted, but decimal points, commas and bars of division *used with figures* are each counted as a figure.

Letters added to figures to form ordinal numbers are each counted as a figure.

*Examples.*

Responsibility (14 letters)...	...	2 words.
A-t-il ...	...	3 "
Aujourd'hui (without apostrophe)	...	1 word.
Aix-la-chapelle	...	3 words.
Aix-la-chapelle (13 letters) ...	...	2 "
New York ...	...	2 "
Newyork ...	...	1 word.
Du Bois ...	...	2 words.
Dubois ...	...	1 word.
444 (5 figures and signs)	...	1 "
444 (6 " " )	...	2 words.
444.5 (5 " " )	...	1 word.
444.55 (6 " " )	...	2 words.
444 55 (2 groups)	...	2 "
10 francs.50 centimes, or 10 fr. 50 c.	...	4 "
10 fr. 50	...	3 "
11 h. 30 m.	...	4 "
11.30	...	1 word.
44/2	...	1 "
44/	...	1 "
2 per cent.	...	3 words.
2%	...	1 word.
Hundertvierunddreissig (22 letters)	...	3 words.
E.	...	1 word.
E. M.	...	2 words.
Emvch (letter cipher)	...	} Inadmissible.
Emrlz ( " " )	...	

**RULE 31.**—In messages which contain cypher the words in ordinary language or in Code are counted according to paras. 1 to 5, and groups of figures according to paras. 6 to 9, of the pre-



ceding rule. Repetition is obligatory for the whole message (unless State). See Rule 22.

Words in a language not admissible under Rule 4 cannot be sent.

**RULE 32.**—The name of the original sending Station, and the date, hour, and minute (Madras time) of deposit of the message are added free, and entered in the copy of the message delivered to the Addressee.

ART. XX and XXXI. Name of "Station from" given free.

**RULE 33.**—Every rectifying or completing message, and generally every communication made to a Telegraph Office relative to a despatch already transmitted or in course of transmission, is charged for, unless such communication shall have been necessitated by an error of the Service.

ART. XVII. Rectifying and completing messages to be paid for.

**RULE 34.**—The charge on a message is calculated according to the least expensive route from the starting point of the message to its destination, unless that route is interrupted or the Sender selects another.

The indication of the route is transmitted in the *Official Instructions* and is not charged for.

**RULE 35.**—The Addressee of any message can, within 24 hours after the delivery of the telegram, request the correction of passages which may appear to him to be doubtful. The same privilege is accorded to the SENDER within a limit of 72 hours following the despatch of the message. The following charges are collected:—

(a).—If from the Sender—the price of message and of the answer if one is demanded.

(b).—If from the Receiver—1st, the price of the message for the Demand; 2d, the price of a return message calculated according to the length of the passage to be repeated.

In the case of a collated message the charges are returned (on application being made to the Check Office, Calcutta, in the manner indicated in Rule 41) if the repetition shows at the mutilation of the sense of the message as made by the Telegraph. No refund is given the cost of messages thus rectified.

#### SPECIAL CHARGE.

**RULE 36.**—Every message which has to be transmitted to its destination by post, or despatched *poste restante*, is post as a registered letter by the Office of delivery without extra charge either to the Sender or Addressee, except in the two following cases:—

ART. LVII. Postage.

(a).—Messages which have to be transmitted to destination by a post, either in consequence of interruption to a submarine line, or reason of being addressed to a copy not connected with the International Telegraph system, are subject to a charge for postage of 12 annas, payable by the Sender.\*

\* On messages from India despatched to places out of India, and which are to be sent from a seaport to destination, the sender also prepays postage and registration fee of 12 annas.

(b).—Messages transmitted to an Office situated near a frontier, to be delivered by post in the neighbouring territory, are posted as unpaid letters, and the postage is payable by the Addressee.

#### PAYMENT.

**RULE 37.**—The charges on messages are prepaid by the Sender. The following are, however, exceptions, and are recovered from the Receiver:—

ART. XXIV. All charges prepaid.

Exceptions.

1st.—The charge for messages sent from sea by Semaphore.

2nd.—The supplementary charge for onward transmission of messages "*To follow*" (*Faire suivre*).

3rd.—The expense of transport beyond the Telegraph lines by quicker means than the post, in States where such service is organized. (The Sender of a message for which an *Acknowledgment* has been prepaid can, however, prepay this transport by depositing a sum for the purpose, to be fixed by the Station of origin subject to after-adjustment. The *Acknowledgment* mentions the amount expended.)

In every case where charges are to be made on arrival, the message is not delivered till payment of the amount due is received.

**RULE 38.**—Insufficient charges received in error,

ART. XXV. In or charges not recovered sufficient and excess through refusal of the Addressee to defray them in full or through his not being found at the address given, MUST BE MADE GOOD BY THE SENDER.

Excess charges made in error are returned, but the value of Telegraph stamps attached to a message in excess of the correct charge by the Sender, can only be recovered by application to the Check Office (see Rule 41).

#### FREE MESSAGES.

**RULE 39.**—Messages relating to the traffic requirements of the International Telegraph Service are transmitted free.

ART. 11.

#### REFUNDS.

**RULE 40.**—The whole cost of any message which has suffered a serious delay in transmission, or which has not been delivered through the fault of the Telegraph Service, is refunded to the Sender by the Administration which received it.

In case of delay the claim for reimbursement is absolute if the message did not reach its destination sooner than it would have done by post, or if the delay exceeds 6 days.

REG. LXIX.

No refund is given for errors in uncollated messages, but the whole cost of a collated message is returned to the Sender, if, in consequence of errors in transmission, it has manifestly failed to fulfil its object.

ART. LXVII. Mutilation.

In the case of interruption on a sub-marine line, the Sender of any message has a right to a refund of the portion of the charge belonging to the distance not traversed, deduction being made, if necessary, of the expense incurred in sending the message by any other mode of transport.

These rules do not apply to messages which pass over the lines of a non-adhering Administration which would not on its side make similar refunds.

Rules not applicable to non-adhering Administrations.

**RULE 41.**—Every claim for reimbursement of charges ought to be made to the CHECK OFFICE, GOVERNMENT TELEGRAPH DEPARTMENT, CALCUTTA, and be supported as follows:—

**REG. LXVIII.** Claim to refund how to be made. In case of *non-delivery*, by a written statement from the terminal Station or Addressee; in case of *mutilation* or *delay*, by the copy actually delivered to the Addressee, and by a certificate stating that, in consequence of the errors complained of, the message *failed to fulfil its object*. The *particular errors* which led to this result should also be specifically mentioned. A complaint regarding a *received* message may, if the Addressee chooses, be addressed to the CHECK OFFICE which, if possible, disposes of it, otherwise it is returned to be presented at the Office of Origin.

If the Sender does not reside in the country where he deposited his message for transmission,

he can have his claim forwarded to the original Administration through the medium of another Administration. In this case, if it becomes evident on investigation that the claim is well founded, the latter is deputed to make the refund.

When a claim to refund is admitted to be well founded by the Administration in fault, the refund is made to the Sender by the CHECK OFFICE.

Claims not paid till admitted by Administration in fault.

Complaints are not forwarded when the fault complained of does not give the Sender a claim to refund, or has resulted from an omission or irregularity on his part.

Claims which are not admissible are not forwarded.

**REG. LXX.** Messages stopped in transit. **RULE 42.**—The charges on messages stopped in transit under operation of Rule 18 are returned to the Sender.

**RULE 43.**—The refund rules apply only to the cost of the actual messages lost, delayed, or mutilated, and not to the cost of any further correspondence caused or rendered useless by such loss, delay, or mutilation, except in the case of the exception mentioned in Rule 33.

**ART. LXVIII.** **RULE 44.**—Every claim should be made, under penalty of rejection, within six months of the date of the message.

C. H. DICKENS, Colonel, R. A.,  
Secy. to the Govt. of India.